

# **Exhibit B**

**FILED UNDER SEAL**

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION

JASON ALFORD, et al.,  
Plaintiffs,

-vs-

Case No.

1:23-cv-00358-JRR

THE NFL PLAYER DISABILITY &  
SURVIVOR BENEFIT PLAN, et al.,  
Defendants.

REMOTE VIDEO-RECORDED DEPOSITION OF  
DR. ANTHONY HAYTER  
11:05 a.m. to 2:16 p.m.  
August 25, 2025

Job No. 7554391

REPORTED BY: Rhonda D. Tuck, RPR, CRR

1 Video-Recorded Deposition of DR. ANTHONY  
2 HAYTER, taken and transcribed on behalf of the  
3 Defendants, by and before Rhonda D. Tuck, RPR, CRR,  
4 Notary Public in and for the Commonwealth of  
5 Virginia at large, commencing at 11:05 a.m.,  
6 August 25, 2025, via remote videoconference.  
7

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25 ALSO PRESENT:  
Curtis Roginski - Videographer

I N D E X

WITNESS: DR. ANTHONY HAYTER

Examination by Attorney McKeen.....6

Examination by Attorney Seeley.....115

E X H I B I T S

Exhibit 8.....14

Expert Rebuttal Report of Dr. Anthony Hayter  
August 15, 2025

Exhibit 9.....81

Expert Report of Dr. Anthony Hayter  
April 11, 2025

REPORTER'S NOTE: All quotations from exhibits are  
reflected in the manner in which they were read into  
the record and do not necessarily indicate an exact  
quote from the document.

\* \* \* \* \*

1 (11:05 a.m., August 25, 2025)

2  
3 THE VIDEOGRAPHER: Good morning. We are  
4 going on the record at 11:05 a.m., on  
5 August 25th, 2025. This is Media Unit 1 of  
6 the video-recorded deposition of Dr. Anthony  
7 Hayter, taken in the matter of Jason Alford,  
8 et al. v. The NFL Player Disability &  
9 Survivor Benefit Plan, et al., filed in the  
10 United States District Court for the District  
11 of Maryland, Baltimore Division. Case Number  
12 1:23-cv-00358-JRR.

13 My name is Curtis Roginski, representing  
14 Veritext, and I am the videographer. The  
15 court reporter is Rhonda Tuck, also of  
16 Veritext.

17 Will counsel please identify yourselves  
18 and state whom you represent.

19 ATTORNEY MCKEEN: Elizabeth McKeen, of  
20 O'Melveney & Myers, on behalf of defendants,  
21 and I am joined here in the room today by my  
22 colleague, Hana Stodder, and Meredith  
23 Garagiola, who is with me by Zoom.

24 ATTORNEY SEELEY: For the plaintiffs,  
25 Caleb Seeley from Seeger Weiss, Hillary

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1 Fidler also from Seeger Weiss by Zoom. And  
2 Sam Katz and Julia Damron, of Aflaw, are also  
3 by Zoom for the plaintiffs.

4 THE VIDEOGRAPHER: Would the court  
5 reporter please swear in the witness.

6 (Witness sworn.)  
7

8 DR. ANTHONY HAYTER,  
9 having been duly sworn, testified as follows:

10 E X A M I N A T I O N

11 BY ATTORNEY MCKEEN:

12 Q. Good morning, Dr. Hayter. I previously  
13 took your deposition in this same lawsuit a couple  
14 months ago. Do you remember that?

15 A. Yes, ma'am.

16 Q. At the beginning of that deposition, we  
17 went over some ground rules. Those are generally  
18 still true today. Do you understand?

19 ATTORNEY SEELEY: Objection to form.

20 THE WITNESS: Yes, I understand, ma'am.

21 BY ATTORNEY MCKEEN:

22 Q. Do you understand that you're under oath  
23 today the same way as you would be if you testified  
24 in a court of law?

25 A. Yes, I do understand that.

1 Q. Are you on any medication today that  
2 might hinder your ability to testify truthfully?

3 A. Not that I am aware of.

4 Q. Is there any reason we can't proceed  
5 with your deposition at this time?

6 A. Not that I am aware of.

7 Q. Dr. Hayter, where are you testifying  
8 from today?

9 A. I am in England.

10 Q. Where in England?

11 A. I am in the county of Devon.

12 Q. What time is it there?

13 A. It is 8 minutes past 4:00 in the  
14 afternoon.

15 Q. Is there anyone else in the room with  
16 you, sir?

17 A. No, ma'am.

18 Q. Do you have any materials in the room  
19 with you?

20 A. Well, I have my computer, and I have  
21 access to my file on my computer, which would be,  
22 for example, my reports and Dr. Lasater's  
23 declarations, and I have my phone next to me, which  
24 is on silent mode. So I have no hard materials,  
25 hard copy materials with me.



1 Q. So if I understand your testimony  
2 correctly, your only form of communication while  
3 we're on the record today is this videoconference  
4 link. Is that true?

5 A. That's how I'm communicating with you,  
6 yes.

7 Q. But you don't have your email open, do  
8 you?

9 A. Not on my computer. I suppose  
10 technically it's on my phone, but my phone is, like,  
11 as I said, silent and sort of closed.

12 Q. And you're not using your phone to  
13 communicate with anybody else right now, are you?

14 A. I am not using my phone. No, ma'am.

15 Q. Thank you. Dr. Hayter, how did you  
16 prepare for your deposition today?

17 A. So I reviewed what I consider to be the  
18 relevant materials in this case, and I had one  
19 meeting with the attorneys who I am working with.  
20 One meeting specifically with regards to this  
21 deposition.

22 Q. When you say you reviewed the relevant  
23 materials, which materials were those?

24 A. I may not be able to recall all of them,  
25 but they would have been my two reports. So

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1 obviously I had an initial report, I think was in  
2 April, and then my rebuttal report in August, and I  
3 would have looked at, maybe referred back to at  
4 least one of Dr. Lasater's declarations from last  
5 year, 2024. And then to various degrees, I would  
6 have looked at all of the materials which I had  
7 received I think subsequent to the last time you  
8 took my deposition, which they should be all listed  
9 in my second report under "Additional Materials  
10 Reviewed," that section.

11 Q. Dr. Hayter, is it your testimony that  
12 you reviewed all of those materials in preparation  
13 for this deposition here today?

14 ATTORNEY SEELEY: Objection to form.

15 THE WITNESS: I wouldn't say necessarily  
16 I reviewed all of them. I certainly I think  
17 looked through all of them, but I may be --  
18 that may not be correct.

19 BY ATTORNEY MCKEEN:

20 Q. Did you review any documents other than  
21 the [REDACTED] to  
22 your August 15th rebuttal report?

23 ATTORNEY SEELEY: Objection to form.

24 THE WITNESS: So I'd like to open up my  
25 rebuttal report and look at [REDACTED] Is

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1	that okay?
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2 BY ATTORNEY MCKEEN:

3 Q. Let's not do that now. If you don't  
4 remember or you don't know, that's okay, and we can  
5 get into your report in a few minutes. Is the  
6 answer that you don't remember without looking at  
7 your report?

8 ATTORNEY SEELEY: Objection to form. He  
9 already identified other documents that he  
10 looked at.

11 THE WITNESS: If you're asking me about  
12 [REDACTED] in my rebuttal report, which as I  
13 recall [REDACTED]

14 [REDACTED]

15 [REDACTED] as I recall.

16 If you're asking me about [REDACTED], I'd like  
17 to open it up and look at it.

18 BY ATTORNEY MCKEEN:

19 Q. Asking you about [REDACTED] What I'm  
20 asking you about is what you reviewed in preparation  
21 for your deposition today, and I'm trying to get  
22 your best recollection of that.

23           A.    I'm sorry.  So you're asking me what I  
24           reviewed in preparation for today's deposition,  
25           right?  So my recollection is I would have reviewed

1 my initial report, which I think was from April, and  
2 then my rebuttal report from August. I would  
3 have -- I think I reviewed at least one of  
4 Dr. Lasater's two declarations from 2024, and then  
5 my recollection is I would have looked through in  
6 various degrees of intensity [REDACTED]

7 [REDACTED] of my rebuttal report,  
8 [REDACTED]  
9 [REDACTED]

10 Q. Is there anything else that you looked  
11 at, in terms of documents, to prepare for this  
12 deposition?

13 A. It's possible, but I don't recall  
14 anything.

15 Q. Okay. Thank you, sir. You mentioned  
16 one meeting with attorneys to prepare for this  
17 deposition. Do I have that right?

18 A. It was basically in reference to today's  
19 deposition. Yes, ma'am.

20 Q. How long was that meeting?

21 A. My recollection is it was an hour and 15  
22 minutes, around about that.

23 Q. When was that meeting, Dr. Hayter?

24 A. So let's see. Today is Monday. So that  
25 would have been before the weekend. So if I'm

1 remembering correctly, that was Friday, the last  
2 Friday, which was -- that would have been Friday,  
3 the 22nd, I believe.

4 Q. Who attended that meeting besides  
5 yourself?

6 A. So it was a Zoom meeting, and there was  
7 myself and there was Caleb Seeley and his colleague,  
8 Hillary Fidler, as I recall.

9 Q. Anyone else?

10 A. Not that I was aware of.

11 Q. Did you discuss your deposition with  
12 anyone other than counsel?

13 A. When you say "counsel," you're referring  
14 to the people in that Zoom meeting, right?

15 Q. That's correct.

16 A. I do not believe I have discussed it  
17 with anyone else. Not as I recall.

18 Q. In connection with preparing your  
19 rebuttal report in this case, did you have any  
20 communications with anyone other than plaintiffs'  
21 counsel to prepare your report?

22 A. I don't believe so. I don't recall  
23 anyone else.

24 Q. You, for example, didn't communicate  
25 with any former NFL players?

1           A.    Not with regards to this case. That is  
2           correct.

3           Q.    Well, did you communicate with any  
4           former NFL players about anything at all?

5           A.    Are you asking in my entire life,  
6           whether I have had communications with former NFL  
7           players?

8           Q.    I'm asking about the preparation of your  
9           rebuttal report, Dr. Hayter, and whether during the  
10          time that you were working on preparing that  
11          rebuttal report, you've spoken to any former NFL  
12          players?

13          A.    I believe as I indicated, with respect  
14          to this case, I have not communicated with any  
15          former NFL players that I'm aware of. Perhaps some  
16          of the lawyers I've been working with are and I'm  
17          not aware of that.

18          Q.    In connection with your work on this  
19          case, have you communicated with any physicians that  
20          were compensated by the plan that you're aware of?

21          A.    I do not believe so. As you asked in  
22          had my first deposition, I think my answer was  
23          assuming that the lawyers I'm working with are not  
24          physicians compensated by the plan, because the only  
25          people that I have communicated with would be the

1 attorneys that I've been working with.

2 Q. And the answers -- the testimony that  
3 you gave about that in your previous deposition  
4 remains true today, with respect to who you've  
5 spoken to about this case?

6 A. Yes. I think you're asking me now, and  
7 I think we had similar discussions at the beginning  
8 of my previous deposition, and I think now and in my  
9 previous deposition, it's the same answer in that  
10 the only people that I have spoken with about this  
11 case are the attorneys that I have been working  
12 with.

13 ATTORNEY MCKEEN: Okay, Dr. Hayter. I'd  
14 like to go ahead and mark as Exhibit 8 to  
15 your testimony the rebuttal report that you  
16 submitted in this case on August 15th.

17 (Exhibit 8 marked for identification.)

18 BY ATTORNEY MCKEEN:

19 Q. So Dr. Hayter, I'm going to have that  
20 put in Exhibit Share and mark it as an exhibit to  
21 your deposition. But if it is easier for you to use  
22 the copy that you said you have locally available to  
23 yourself, whatever is easiest for you.

24 I'll just ask you, does the copy that  
25 you have accessible have any markings or notes on

1 it, or is it a clean copy?

2 A. Okay. So I'm on the Exhibit Share, and  
3 I think it's loading a document. Right. So I'm on  
4 the Exhibit Share and I see Exhibit 8, which looks  
5 very much like the first page of my report of  
6 August 15th, but as you indicated, I am also opening  
7 up a copy on my computer.

8 So I have a PDF file open on my  
9 computer, which is [REDACTED] of my rebuttal report  
10 of August 15th, and it does not have any annotations  
11 or markings on it beyond what I submitted to Caleb  
12 Seeley.

13 Q. Thank you, Dr. Hayter. You can refer to  
14 whichever version is easiest for you, but before we  
15 go forward, I'd just like to ask you to confirm that  
16 what we've marked as Exhibit 8 to your deposition is  
17 a copy of your August 15th rebuttal report.

18 A. Well, the first page appears to be  
19 identical to the first page of the PDF file that I  
20 have open.

21 Q. Do you need to look at the rest of the  
22 report to confirm that this is --

23 A. Oh, I'm sorry.

24 Q. It's okay. That's what it is, I'll  
25 represent it to you. I'd just like your testimony



1       that yes, this is your report.

2               ATTORNEY SEELEY: Objection to form. Do  
3       you want him to go page by page?

4               ATTORNEY MCKEEN: I sure hope he doesn't  
5       feel like he has to. This shouldn't be that  
6       hard.

7               ATTORNEY SEELEY: Well, if you're asking  
8       him to confirm it, I think he would need to.  
9       But if you just want to represent it, I think  
10      we'll accept your representation.

11      BY ATTORNEY MCKEEN:

12              Q. Dr. Hayter, I noticed that you deleted  
13      the website HayterStatistics.com from your CV  
14      between your last report and this one. Why did you  
15      do that?

16              A. So just to clarify the previously, I  
17      didn't actually realize I could scroll through it.  
18      I thought you were just showing me the first page.  
19      But now I realize I actually have control of it on  
20      Exhibit Share and I see it as a 167-page document,  
21      or at least that's what it says.

22                      So that website, I have, I've  
23      essentially stop paying for, and it has been taken  
24      down.

25              Q. What was that website?

1 A. The name of it was HayterStatistics.com.

2 Q. But what was it? What was included on  
3 the website?

4 A. It was essentially marketing myself as  
5 an expert witness in statistics and mathematics, so  
6 it had my resume. It had references from attorneys  
7 that I've worked with. It had some details of the  
8 kind of cases I've worked on. It had my contact  
9 information and things like that.

10 Q. Was there a reason you decided to  
11 discontinue paying for the website?

12 A. Yes, ma'am.

13 Q. What was that reason?

14 A. It's because I don't wish to solicit new  
15 cases to work on beyond the cases I'm working on and  
16 the cases I get from the attorneys I already have  
17 relationships with.

18 Q. Is that the primary source of your new  
19 work as an expert witness, the relationships you  
20 already have with attorneys?

21 ATTORNEY SEELEY: Objection to form.

22 THE WITNESS: I'm sorry, just to  
23 clarify. When you said "is that the," you're  
24 not --"that" is not the website; it's  
25 something else, right?

1 BY ATTORNEY MCKEEN:

2 Q. I'm asking you if your relationships  
3 that you mentioned with attorneys that you already  
4 work with, if that's your main source of new work as  
5 an expert?

6 ATTORNEY SEELEY: Objection to form,  
7 scope.

8 THE WITNESS: I think the answer to that  
9 depends upon what time period I look at.

10 BY ATTORNEY MCKEEN:

11 Q. I'm asking about today, sir.

12 A. Well --

13 ATTORNEY SEELEY: Objection to form.

14 THE WITNESS: -- today, let's say this  
15 year, 2025. I think -- as I recall, I think  
16 all of the new cases that I have accepted  
17 this year, 2025, I'm thinking that they are  
18 all from attorneys that I have previous  
19 relationships with or similar matters, maybe  
20 colleagues of those attorneys. I might be  
21 wrong, but that's the recollection I have.

22 BY ATTORNEY MCKEEN:

23 Q. Did you prepare your rebuttal report by  
24 yourself, or did you have help?

25 A. I prepared it entirely by myself.

1 Although, I did receive information from the  
2 attorneys that I'm working with.

3 Q. And is that information all listed in  
4 [REDACTED] of your August 15th report?

5 A. Is this a moment where I can look at  
6 [REDACTED]

7 Q. Why don't you have a look at [REDACTED]  
8 I'm sorry, [REDACTED] and confirm [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 A. So I'm looking at [REDACTED]

12 Q. I'm sorry, it should be [REDACTED]  
13 [REDACTED]

14 A. You are absolutely correct. Thank you.  
15 I'm looking at [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 Q. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 A. [REDACTED]

24 Q. And you -- I think you specifically said  
25 that you received information from counsel. Just so

1 we're on the same page, [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 ATTORNEY SEELEY: So at this point,  
6 Doctor, I'll just -- it's more of a caution  
7 than an instruction, but obviously to the  
8 extent you received or discussed your  
9 compensation with counsel or to the extent  
10 you received facts or assumptions that were  
11 part of your analysis, you are free to  
12 discuss them, but any other communications  
13 with counsel are protected work product and  
14 not subject to discovery pursuant to the  
15 rules of evidence, so I just caution you to  
16 if you can answer the question given that  
17 guidance.

18 THE WITNESS: Thank you.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] So that was what I was  
thinking of when I indicated that I have  
received information from the attorneys that  
I'm working with.

BY ATTORNEY MCKEEN:

Q. Okay. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

ATTORNEY SEELEY: Objection to form.

THE WITNESS: Right. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] So those

1 are my understandings from the communications  
2 I had from the attorneys that I'm working  
3 with.

4 BY ATTORNEY MCKEEN:

5 Q. The understandings that you describe [REDACTED]  
6 [REDACTED] those  
7 understandings come from your conversations with  
8 counsel; is that correct?

9 A. Yes, if counsel means the attorneys that  
10 I'm working with.

11 Q. Okay. So with respect to your testimony  
12 on [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] how did you come to have that  
18 understanding?

19 ATTORNEY SEELEY: Objection to form.

20 THE WITNESS: Because it was  
21 communicated to me by the attorneys that I'm  
22 working with.

23 BY ATTORNEY MCKEEN:

24 Q. Which attorneys communicated that to  
25 you?

1           A.     It was on Zoom meetings with Caleb  
2     Seeley and Hillary Fidler.

3           Q.     Was anyone else present during those  
4     Zoom meetings?

5           A.     I'm thinking -- I think -- so there was  
6     more than one meeting, and I am now recalling I  
7     think on one of the meetings -- it might have been  
8     an initial meeting there was another attorney, as  
9     well, who I believe was a colleague of Mr. Seeley,  
10    Caleb Seeley and Hillary Fidler.

11          Q.     Did Sam Katz participate in any of these  
12    meetings?

13                ATTORNEY SEELEY:  Objection to form.

14                THE WITNESS:  Not that I was aware of.

15    BY ATTORNEY MCKEEN:

16          Q.     What about anyone else from his law  
17    firm?  Do you know one way or the other?

18          A.     Not that I was aware of.

19          Q.     What was communicated to you in these  
20    meetings?

21                ATTORNEY SEELEY:  Objection to form.

22                Asked and answered.

23                THE WITNESS:  Well, we had conversations  
24    about a lot of things in these meetings.

25                ATTORNEY SEELEY:  I'm just saying again,



1 Doctor, the same caution as before. To the  
2 extent there's facts or assumptions that were  
3 provided to you for your opinions, you can  
4 answer. But any other discussions with  
5 counsel I will instruct you not to answer.

6 BY ATTORNEY MCKEEN:

7 Q. Dr. Hayter, you say in your report [REDACTED]  
8 [REDACTED]  
9 [REDACTED], and I want to know what counsel  
10 told you to cause you to come to that conclusion  
11 that you've expressed here in your report?

12 ATTORNEY SEELEY: Objection to form. It  
13 states that language in the report.

14 THE WITNESS: So I'm looking at [REDACTED]  
15 of my rebuttal report, and I'll talk about  
16 that paragraph, the paragraph on [REDACTED],  
17 because the paragraph on Page -- I've  
18 forgotten, was it [REDACTED] It's essentially the  
19 same except it says [REDACTED]

20 [REDACTED]

21 So looking at this paragraph on  
22 Page [REDACTED], it says -- this is what I wrote,

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 So the communication I had from the  
2 attorneys that [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 And then following on, I mean, the  
6 second part of that sentence that I wrote, I  
7 said, [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 So the communication that I had from the  
11 attorneys that [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 BY ATTORNEY MCKEEN:

16 Q. I see your words, Dr. Hayter. What I'm  
17 asking you is what they said to you to cause you to  
18 write those words.

19 ATTORNEY SEELEY: Objection to form.

20 Asked and answered.

21 THE WITNESS: They said to me exactly  
22 what I wrote there.

23 BY ATTORNEY MCKEEN:

24 Q. They said exactly [REDACTED]  
25 [REDACTED] or did they give you any more information

1 other than what is on this page?

2 A. They communicated the meanings to me  
3 that I've written there. I mean, if you're asking  
4 me what were the exact words they said, they may  
5 very well have been these exact words that I wrote  
6 down.

7 So when I said it is my understanding  
8 that [REDACTED]  
9 [REDACTED], maybe Caleb Seeley  
10 on the Zoom call said exactly those words, [REDACTED]

11 [REDACTED]  
12 [REDACTED]

13 When I wrote here [REDACTED]  
14 [REDACTED]  
15 [REDACTED], maybe Caleb Seeley said  
16 those exact words, [REDACTED]

17 [REDACTED]  
18 [REDACTED]

19 But I don't recall the specific words  
20 that were used in those meetings, although I'm quite  
21 certain that that was the meaning and the  
22 understanding that I took.

23 Q. So you say maybe he said this but that  
24 you don't specifically remember the words that were  
25 used in that conversation; is that right?

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1 ATTORNEY SEELEY: Objection to form. Do  
2 you want his answer read back to him?

3 ATTORNEY MCKEEN: No, I don't.

4 THE WITNESS: So let me look at it  
5 again. I wrote --

6 BY ATTORNEY MCKEEN:

7 Q. Dr. Hayter, I'm not asking you what you  
8 wrote. I'm asking you to tell me everything you  
9 remember from this conversation?

10 ATTORNEY SEELEY: Counsel, do not  
11 interrupt the witness. You asked him to  
12 repeat back his answer, and he was  
13 reconfirming for you his answer. He's  
14 allowed to finish his answer, and then you  
15 can continue. If you want to ask the same  
16 question, you're going to get the same  
17 answer.

18 ATTORNEY MCKEEN: I didn't ask him to  
19 repeat back his answer, Caleb, and I'll thank  
20 you to discontinue the extensive and  
21 unnecessary speaking objections, or we're  
22 going it take longer today. I'd really like  
23 to not have to do that.

24 BY ATTORNEY MCKEEN:

25 Q. Dr. Hayter, I'm asking you to tell me

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1 everything you remember that was communicated to you  
2 in this conversation with plaintiffs' counsel?

3 ATTORNEY SEELEY: Objection to form.

4 That's not a question, and the previous  
5 question was not that.

6 ATTORNEY MCKEEN: It is a question, and  
7 it's the question I'm asking, Caleb. You can  
8 like it or not, but that's my question.

9 BY ATTORNEY MCKEEN:

10 Q. Dr. Hayter, tell me everything you can  
11 remember that was communicated to you about this in  
12 your conversation with plaintiffs' counsel?

13 ATTORNEY SEELEY: Objection to form.

14 Same objections.

15 THE WITNESS: So when you said "this  
16 conversation," what exactly are you referring  
17 to? Because as I've said, I've had various  
18 meetings with the attorneys that I've been  
19 working with since I received Dr. Lasater's  
20 rebuttal report.

21 BY ATTORNEY MCKEEN:

22 Q. Any conversations that inform the  
23 testimony that we've specifically been talking about  
24 on [REDACTED]

25 ATTORNEY SEELEY: Objection to form.

1                   What's the question?

2                   THE WITNESS: Could you please repeat  
3                   the question?

4           BY ATTORNEY MCKEEN:

5                   Q. What do you remember about these  
6                   conversations that inform your testimony on  
7                   [REDACTED] Dr. Hayter?

8                   ATTORNEY SEELEY: Objection.

9           BY ATTORNEY MCKEEN:

10                   Q. What else do you remember about these  
11                   conversations that you have not already told me?

12                   ATTORNEY SEELEY: The same objections.

13                   THE WITNESS: I'm quite certain that all  
14                   the communications that I had on this topic  
15                   gave me the understanding that [REDACTED]

16                   [REDACTED]

17                   [REDACTED], and

18                   I'm quite certain that these communications  
19                   gave me the information that -- or the  
20                   understanding that [REDACTED]

21                   [REDACTED]

22                   [REDACTED]

23                   [REDACTED]

24                   I cannot repeat to you the dialogue of  
25                   the conversations that I had on this topic in

1           those Zoom meetings, but I can tell you quite  
2           clearly that those are the understandings I  
3           received.

4           BY ATTORNEY MCKEEN:

5           Q.    Did counsel communicate to you any facts  
6           surrounding the circumstances associated with [REDACTED]

7           [REDACTED]

8           ATTORNEY SEELEY:  Objection to form.

9           THE WITNESS:  You'll have to give me  
10          that again, please, but I don't think so.  I  
11          think the answer is no, but please ask me  
12          that again.

13          BY ATTORNEY MCKEEN:

14          Q.    I'm asking, did they describe the  
15          situation to you that [REDACTED]?

16          ATTORNEY SEELEY:  Objection to form.

17          THE WITNESS:  I'm not sure what that  
18          means.

19          BY ATTORNEY MCKEEN:

20          Q.    Dr. Hayter, you've said here that it's  
21          your understanding that [REDACTED]  
22          [REDACTED], and I'm trying to find out what  
23          plaintiffs' counsel told you to lead you to that  
24          conclusion.  Did they give you any facts that caused  
25          you to conclude that [REDACTED] or

1 did they simply say to you [REDACTED]

2 [REDACTED]?

3 ATTORNEY SEELEY: Apologies for speaking  
4 over you. Objection to form.

5 THE WITNESS: I think I understand what  
6 you're saying. So I think you laid out two  
7 things there, and I believe it's the second  
8 of the two.

9 So I think the first thing you said  
10 there was that I was given some information  
11 from which I concluded that, I concluded that

12 [REDACTED]

13 [REDACTED]

14 I don't think that's what happened.  
15 What happened was I was sort of specifically  
16 told that, which is how I got the  
17 understanding.

18 BY ATTORNEY MCKEEN:

19 Q. Thank you, Dr. Hayter. And is that true  
20 for both the [REDACTED] paragraph we've been  
21 discussing as well as the paragraph that's on  
22 [REDACTED]? Is that true for both?

23 ATTORNEY SEELEY: Objection to form.

24 THE WITNESS: It is true for both

25 [REDACTED], and I believe you



1 did get the page numbers correct.

2 BY ATTORNEY MCKEEN:

3 Q. Is there any other information given to  
4 you by plaintiffs' counsel that forms the basis of  
5 any of the opinions contained in your report other  
6 than what we've already discussed?

7 ATTORNEY SEELEY: Objection to form.

8 The same instructions as before.

9 THE WITNESS: So what we just discussed,  
10 again those are my understandings. I don't  
11 think I would consider those to be opinions,  
12 but thinking -- I can't think of any other  
13 information I received from the attorneys  
14 that I needed for my rebuttal report. There  
15 may be things, but I can't recall anything  
16 else.

17 BY ATTORNEY MCKEEN:

18 Q. Dr. Hayter, does your rebuttal report  
19 along with your initial report, do those two  
20 documents contain a complete statement of all the  
21 opinions that you do intend to offer in this case?

22 A. Well, all I can tell you is the opinions  
23 I have at the moment, and I would say they do  
24 contain -- as far as I'm aware, they do contain all  
25 of the opinions I currently hold which I think are

1 relevant to the task I've been given. Although, I  
2 may have more details on those opinions which would  
3 allow me to explain them more fully, I suppose,  
4 perhaps.

5 Q. Could I find information about those  
6 more details that you would intend to share about  
7 your opinions?

8 ATTORNEY SEELEY: Objection to form.

9 THE WITNESS: I think if you asked me  
10 about them, I would be glad to provide you  
11 any additional information which may be  
12 helpful that I have, but there may not be any  
13 additional information.

14 BY ATTORNEY MCKEEN:

15 Q. Dr. Hayter, did you conduct any  
16 statistical analysis that you did not include in  
17 your reports as part of your work on this case?

18 A. And you're asking me about both reports,  
19 right?

20 Q. Yes, sir.

21 A. I think you asked me that in my first  
22 deposition, didn't you, and I indicated that there  
23 were other analyses that I had performed, just  
24 getting to know the datasets.

25 Q. What about in connection with your

1 rebuttal report?

2 A. So to clarify, your question is about  
3 any analysis I might have done for my rebuttal  
4 report which are not explained or discussed in my  
5 rebuttal report; is that correct?

6 Q. In connection with preparing your  
7 rebuttal report and doing work on this case that  
8 you've done since your initial report, did you  
9 perform any statistical analyses that are not  
10 described in your rebuttal report?

11 ATTORNEY SEELEY: Objection to form.

12 THE WITNESS: I cannot recall anything  
13 along those lines.

14 BY ATTORNEY MCKEEN:

15 Q. Nothing you did to test or explore the  
16 data that then you decided to exclude or not to  
17 include in your rebuttal report?

18 ATTORNEY SEELEY: Objection to form.

19 THE WITNESS: I do not recall any  
20 analyses that I have done since our last  
21 deposition that is not described or referred  
22 to in my rebuttal report, as I recall.

23 BY ATTORNEY MCKEEN:

24 Q. Have any of your opinions changed since  
25 you signed your rebuttal report on August 15th?

1           A.    And you cut out. I didn't get -- we had  
2           the same problem in the first deposition I think. I  
3           can't hear the first words of your question.

4           Q.    Have any of your opinions changed since  
5           you signed your rebuttal report on August 15th?

6           A.    I can't think of any opinions that have  
7           changed. Although, I may be able to explain my  
8           opinions in more detail.

9           Q.    Have you identified any errors in your  
10          rebuttal report since you've submitted it?

11          A.    Not as I recall.

12          Q.    Anything about the rebuttal report that  
13          you think needs to be changed or amended in any way?

14          A.    Not beyond as I indicated some of my  
15          opinions I could explain in more detail or more  
16          fully.

17          Q.    Dr. Hayter, with respect to [REDACTED] of  
18          your report that we were talking about earlier, [REDACTED]

19          [REDACTED]

20          [REDACTED]

21                   ATTORNEY SEELEY: Objection to form.

22                   THE WITNESS: Okay. So I'm looking at

23          [REDACTED] Thank you for  
24          correcting me last time. It is [REDACTED]  
25          and it starts on [REDACTED]

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[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

1 BY ATTORNEY MCKEEN:

2 Q. Any materials that you requested from  
3 counsel that they did not send you?

4 A. I'm pretty sure I didn't hear the  
5 beginning of that question.

6 Q. Were there any materials you requested  
7 from counsel that they did not send you, Dr. Hayter?

8 A. Not as I recall.

9 Q. Dr. Hayter, on [REDACTED] of your rebuttal  
10 report, you talk about [REDACTED], correct?

11 A. So I'm going to [REDACTED] which is the  
12 [REDACTED] Actually -- so if you  
13 go to [REDACTED], which is [REDACTED]  
14 [REDACTED] of my rebuttal report, you'll see I've  
15 laid out [REDACTED]

16 [REDACTED]  
17 Q. So explain to me your understanding of  
18 [REDACTED] in this case.

19 A. Well, I thought you were going to say  
20 explain [REDACTED], which I routinely do in  
21 front of classes of undergraduates and graduate  
22 students. But you said in this case, so [REDACTED]

23 [REDACTED]  
24 [REDACTED] o

25 [REDACTED]

1 [REDACTED]  
2 [REDACTED] [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED].

11 Q. I'm not sure that answers my question,  
12 but I'll move on. Dr. Hayter, is [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]?

19 ATTORNEY SEELEY: Objection to form.

20 THE WITNESS: [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]t  
24 [REDACTED]  
25 [REDACTED] [REDACTED]



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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

BY ATTORNEY MCKEEN:

Q. That wasn't really my question,  
Dr. Hayter.

My question is whether you believe that  
plaintiffs in this case believe that there is a  
relationship between the outcomes of players'  
applications or appeals on the one hand and the  
number of evaluations performed by neutral  
physicians on the other hand?

ATTORNEY SEELEY: Objection to form.

THE WITNESS: Are you still talking  
about [REDACTED]  
[REDACTED] Because it seemed to  
me that what you just said then was different  
[REDACTED]  
[REDACTED] of my rebuttal  
report, [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]

BY ATTORNEY MCKEEN:

Q. Dr. Hayter, what do you understand the plaintiffs' claims to be in this case?

ATTORNEY SEELEY: Objection to form.  
Scope.

THE WITNESS: My understanding of plaintiffs' claims in the sort of general and simple sense is that there's a relationship between the individual physician recommendations, the recommendations that physicians make from their player evaluations, there's a relationship between the recommendations that the physicians make from their player evaluations and their overall total compensation.

That's my understanding from a sort of statistical basis, although it may be that the plaintiffs are actually claiming some reasoning for why that relationship exists.

BY ATTORNEY MCKEEN:

Q. Do you understand plaintiffs' claims to be about wrongful benefit determinations?

1                   ATTORNEY SEELEY: Objection to form.  
2                   Scope.

3                   THE WITNESS: So I think you switched  
4                   there from individual physician  
5                   recommendations to I think you said benefit  
6                   determinations which would sort of be the  
7                   outcomes of the applications and appeals.

8                   So I don't really want to speak for the  
9                   plaintiffs in terms of trying to put into  
10                  words exactly what their claims are, but I  
11                  can tell you from my role as a statistician,  
12                  it's to do with that association between the  
13                  individual physician recommendations and the  
14                  total compensations of the physicians.

15                BY ATTORNEY MCKEEN:

16                  Q. Do you have any understanding of how  
17                  individual physician recommendations affect the  
18                  benefit outcome that a particular player receives?  
19                  Those things are related, aren't they?

20                  ATTORNEY SEELEY: Objection to form.

21                  THE WITNESS: I believe that's discussed  
22                  in great detail in my first report, and that  
23                  has to do with issues like I think what I  
24                  call Mr. Hessam, Sam Vincent's general rule  
25                  and the use of MAPs and things like that.

1 BY ATTORNEY MCKEEN:

2 Q. Do you think particular players have an  
3 injury or a harm that's associated with a particular  
4 physician's recommendation, or is their harm or  
5 their injury that they're claiming in this lawsuit  
6 associated with the actual outcome of their  
7 application for benefits?

8 ATTORNEY SEELEY: Objection to form.

9 Scope.

10 THE WITNESS: I think you really lost me  
11 there. And when you say "harm," at first I  
12 thought you were talking like a physical  
13 injury, like I broke my arm or I have  
14 headaches and severe concussion or something  
15 like that.

16 Or did you mean sort of like a legal  
17 definition of they've been harmed legally by  
18 how the plan is being implemented?

19 BY ATTORNEY MCKEEN:

20 Q. That's a fair question, Dr. Hayter.

21 Do you have an understanding of how  
22 plaintiffs claim that they have been legally harmed  
23 in this case?

24 ATTORNEY SEELEY: Objection to form.

25 Scope.

1 THE WITNESS: Okay. So now -- so now  
2 you're asking me about legal harm. So again,  
3 as a statistician, I have an understanding of  
4 how I understand the plaintiffs' claims,  
5 which I've explained to you, which is that  
6 relationship between individual physician  
7 recommendations and physician total  
8 compensation.

9 So I'm not expressing any legal opinion,  
10 but it would then seem obvious to me that the  
11 plaintiffs are then claiming -- or the  
12 plaintiffs would say that if that claim is  
13 correct, then that produces a sort of harm to  
14 the players in some way, which I think is  
15 what you're referring to as the legal harm.

16 BY ATTORNEY MCKEEN:

17 Q. Dr. Hayter, for an individual  
18 physician's recommendation to affect a player at all  
19 one way or another, that recommendation has to have  
20 some bearing on the ultimate outcome of that  
21 player's request for benefits, right?

22 ATTORNEY SEELEY: Objection to form.

23 BY ATTORNEY MCKEEN:

24 Q. That's what matters to the player,  
25 right, Dr. Hayter, how their claim for benefits is

1 decided one way or the other, right?

2 ATTORNEY SEELEY: Objection to form.

3 THE WITNESS: I don't think I can agree,  
4 in general, completely to what you've just  
5 said.

6 BY ATTORNEY MCKEEN:

7 Q. Why not?

8 A. It seems to me that what you were saying  
9 is that if a physician -- I'm sorry, if a player  
10 makes an application or an appeal and they are asked  
11 to go to see a physician and be evaluated by the  
12 physician and that physician will then make a  
13 recommendation based upon the evaluation of the  
14 player.

15 It seemed to me that you were suggesting  
16 that the physician's evaluation of the player based  
17 upon his or her sort of physical evaluation of a  
18 player, you seem to be suggesting that was  
19 irrelevant to the player.

20 Q. That wasn't actually my question,  
21 Dr. Hayter. My question is isn't what matters the  
22 outcome of the application for benefits?

23 ATTORNEY SEELEY: Objection to form.

24 THE WITNESS: I think obviously that the  
25 player is affected by the outcome, but I

1 think the player is also affected by the  
2 manner in which that outcome was arrived at.

3 BY ATTORNEY MCKEEN:

4 Q. How so?

5 A. Because everything that goes into the  
6 decision of the outcome is sort of affecting the  
7 decision of the outcome.

8 Q. How so, Dr. Hayter?

9 ATTORNEY SEELEY: Objection to form.

10 THE WITNESS: It's because if the final  
11 outcome is based upon a lot of inputs, then  
12 all of those inputs are in some sense  
13 relevant to the final outcome of the  
14 application or appeal.

15 BY ATTORNEY MCKEEN:

16 Q. How are the inputs relevant to the  
17 outcome if they don't affect it?

18 ATTORNEY SEELEY: Objection to form.

19 Asked and answered, multiple times.

20 THE WITNESS: I'm not sure how you  
21 would -- or why one would say that an input  
22 to the outcome does not affect the outcome.

23 BY ATTORNEY MCKEEN:

24 Q. Okay. I'll give you a hypothetical  
25 example. Let's say that Physician A is biased

1       against finding that a player meets the plan's  
2       requirements for a disability.

3               Are you with me so far? Let's say  
4       there's this physician who is biased in the way that  
5       is hypothesized by plaintiffs' complaint. If that  
6       physician approves or finds that a particular player  
7       does qualify for benefits, do you believe that  
8       player has been impacted by that physician's bias?

9               ATTORNEY SEELEY: Objection to the  
10       hypothetical.

11              THE WITNESS: You say this physician is  
12       biased. I think you might need to explain  
13       exactly what you mean by all the implications  
14       of the bias.

15              If a player goes to a physician and that  
16       physician's recommendation is an approval for  
17       the application or the appeal, I think that's  
18       the best the player could hope for.

19       BY ATTORNEY MCKEEN:

20              Q. And has that player -- again, given this  
21       hypothetical, would that player have suffered any  
22       harm, in your opinion?

23              ATTORNEY SEELEY: Objection to form.

24              THE WITNESS: As far as I can tell from  
25       your question here, if on that one individual



1 evaluation, if there's an evaluation where a  
2 physician recommends approval, I do not  
3 see -- possibly there may be, but I don't see  
4 how that would harm the player. I think that  
5 would be the best the player could hope for.

6 BY ATTORNEY MCKEEN:

7 Q. Dr. Hayter, in your report, you talk  
8 about [REDACTED]

9 [REDACTED]. Do I have that right?

10 A. [REDACTED] [REDACTED]

11 Q. Okay. [REDACTED]

12 [REDACTED]  
13 ATTORNEY SEELEY: Objection to form.

14 BY ATTORNEY MCKEEN:

15 Q. Can you give me an example or [REDACTED]  
16 [REDACTED]?

17 ATTORNEY SEELEY: The same objection.

18 THE WITNESS: [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]  
2 [REDACTED] [REDACTED]  
3 [REDACTED].  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 BY ATTORNEY MCKEEN:

18 Q. Power is something that you can  
19 calculate as a numerical value, is it not?

20 ATTORNEY SEELEY: Objection to form.

21 THE WITNESS: Yes, there are situations  
22 for hypotheses tests where one can calculate.  
23 It's actually called the power function. So  
24 one can specify values for specific instances  
25 of the alternative hypothesis and numerically

1 calculate a power value which would then give  
2 you a power function. Although, that's  
3 totally irrelevant in this case because it's  
4 the format of the chi-square tests which make  
5 them have low power. It's not like you  
6 didn't have enough information and that's why  
7 it's low power because often power is related  
8 to a sample size.

9 So the larger the sample size, the  
10 higher the power. That's not the point here.  
11 The point here is that these chi-square tests  
12 are just looking in the wrong place for  
13 evidence of the plaintiffs' claims.

14 BY ATTORNEY MCKEEN:

15 Q. Well, looking in the wrong place isn't  
16 saying anything about the statistical power of the  
17 tests. Those are two different things, aren't they?  
18 You've just described to me the fact that you can  
19 calculate a power function. That's something  
20 different from what you call looking in the wrong  
21 place.

22 Those are two different critiques,  
23 right? Those are two different things, aren't they?

24 ATTORNEY SEELEY: Objection to form.

25 THE WITNESS: No. In this case, they're

1 exactly the same thing. The whole point  
2 about the low power is that it's because of  
3 the preprocessing of the data and looking in  
4 the wrong place.

5 BY ATTORNEY MCKEEN:

6 Q. You haven't calculated a power function  
7 for any of Dr. Lasater's chi-square statistics, have  
8 you?

9 A. There's no reason to calculate a power  
10 function, [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] which I explain in my rebuttal report and  
14 the fact that -- as you will see, I gave some  
15 examples in my rebuttal report that [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]. So that's  
23 why they're looking in the wrong way for evidence of  
24 the plaintiffs' claims, and that's why they're  
25 uninformative and meaningless, and there's no reason

1 to calculate a power function to understand that.

2 BY ATTORNEY MCKEEN:

3 Q. Dr. Lasater (sic), I'm going to move to  
4 strike your entire answer as nonresponsive to my  
5 question. It was a yes-or-no question about whether  
6 you've performed that calculation. I gather your  
7 answer is no?

8 ATTORNEY SEELEY: Objection to the  
9 motion to strike --

10 ATTORNEY MCKEEN: I'm not asking for a  
11 lengthy speech about why not.

12 BY ATTORNEY MCKEEN:

13 Q. I'm just asking, have you performed that  
14 calculation? Yes or no.

15 ATTORNEY SEELEY: Objection to the form.  
16 Asked and answered.

17 THE WITNESS: Did anyone point out that  
18 I'm not Dr. Lasater?

19 BY ATTORNEY MCKEEN:

20 Q. I'm sorry, Dr. Hayter. Yes, or no?

21 ATTORNEY SEELEY: Objection to form.

22 THE WITNESS: There's absolutely no  
23 reason to calculate a power function for  
24 Dr. Lasater's chi-square tests because of all  
25 the reasons I just gave you, because it's so

1           obvious that they're uninformative and  
2           meaningless, and I have not done that because  
3           there's absolutely no reason to do that.

4       BY ATTORNEY MCKEEN:

5           Q.    In calculating the power function of a  
6           particular chi-square statistic, what would you  
7           consider to be a high-power value?

8           ATTORNEY SEELEY:  Objection to form.

9           THE WITNESS:  It all depends upon the  
10          particular scenario of interest.

11       BY ATTORNEY MCKEEN:

12          Q.    Would you agree that a 99 percent power  
13          statistic is not low?

14          ATTORNEY SEELEY:  Objection to form.

15          THE WITNESS:  The powers of probability  
16          which has to be between zero and one.  So if  
17          one calculated a power value of 99 percent,  
18          0.99, that would be very close to the upper  
19          limit.

20       BY ATTORNEY MCKEEN:

21          Q.    So not low?

22          A.    Well, it all depends on the context, but  
23          generally if you're between zero and one, 0.99 is  
24          very high.

25          Q.    Thank you, Dr. Hayter.

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1           A.     But if you're talking about the power of  
2     a chi-square test, I mean, that in itself is not the  
3     point. It's what that power --

4           ATTORNEY MCKEEN: There's no question  
5     pending, sir.

6           Can we take a break, please, and go off  
7     the record?

8           ATTORNEY SEELEY: Sure, we can go off  
9     the record.

10          THE VIDEOGRAPHER: This marks the end of  
11     Media Unit Number 1. Going off record. The  
12     time is 12:14 p.m.

13          (Break in proceedings.)

14          THE VIDEOGRAPHER: This marks the  
15     beginning of Media Unit Number 2. Going back  
16     on record. The time is 12:22 p.m.

17     BY ATTORNEY MCKEEN:

18           Q.     Dr. Hayter, do you understand that  
19     you're still under oath today?

20           A.     Yes, I do. Thank you.

21           Q.     We've just taken a brief break. Did you  
22     discuss your testimony with anyone during that  
23     break?

24           A.     No, I did not.

25           Q.     On [REDACTED] of your rebuttal report, [REDACTED]

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[REDACTED]  
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[REDACTED]  
[REDACTED]

Did I read that correctly?

A. I'm not sure.

ATTORNEY SEELEY: Did you say [REDACTED], Liz?

ATTORNEY MCKEEN: Yes.

ATTORNEY SEELEY: I'm not sure I -- I  
see it.

ATTORNEY MCKEEN: It's at [REDACTED]  
[REDACTED].

ATTORNEY SEELEY: Thank you.

BY ATTORNEY MCKEEN:

Q. Are you with me, Dr. Hayter?

A. I am looking at [REDACTED] Thank you.

Q. Do you see where you refer to, [REDACTED]  
[REDACTED]

A. Yes. Thank you. In the first full  
paragraph on [REDACTED].

Q. Is it your understanding that  
plaintiffs' claims in this lawsuit are only focused  
on those few physicians who individually received  
the highest total compensations?



1 ATTORNEY SEELEY: Objection to form.

2 THE WITNESS: I think so. Although, I  
3 mean, I don't want to speak for the  
4 plaintiffs, but my understanding is that the  
5 plaintiffs' claims are relating to the  
6 physicians who had the highest total  
7 compensations and their individual  
8 recommendations.

9 The point of this paragraph is that

10 [REDACTED],  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED].  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
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[REDACTED]  
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BY ATTORNEY MCKEEN:

Q. Dr. Hayter, is it your understanding that plaintiffs' lawsuit is about those six physicians, or is it about a larger group of highly compensated physicians?

ATTORNEY SEELEY: Objection to form, scope.

THE WITNESS: The way I understand this case is that if full information about the entire V3 dataset were available, which it's not, you know, if complete information were available on all the physicians' individual evaluations and all the physicians' compensations, then the plaintiffs would be able to examine that and specifically identify the most highly compensated physicians which they feel are then the basis for their legal claim, but I think it's impossible to actually know the number without a complete analysis of all the information in the V3 datasets which I understand is not available.

1 BY ATTORNEY MCKEEN:

2 Q. Dr. Hayter, do you have an  
3 understanding, as the expert in this case, about  
4 what subset of physicians would constitute what you  
5 refer to as the few physicians who received the  
6 highest total compensation? Is that the top six?  
7 Is that the top 10 percent of physicians by  
8 compensation?

9 I'm just trying to figure out which  
10 population you're referring to when you talk about  
11 the few physicians that form the basis for the  
12 plaintiffs' claims.

13 ATTORNEY SEELEY: Objection to form.

14 Asked and answered.

15 THE WITNESS: So what I am referring to  
16 when I said "few physicians" is essentially  
17 the physicians that would substantiate the  
18 plaintiffs' claims.

19 Now, in order --

20 BY ATTORNEY MCKEEN:

21 Q. How would you do that?

22 ATTORNEY SEELEY: Can you let him  
23 finish, please?

24 BY ATTORNEY MCKEEN:

25 Q. You've said that you think we're short

1 on time, so I'm really trying to cut down on the  
2 speeches that aren't in any way responsive to my  
3 questions?

4 ATTORNEY SEELEY: We can just agree to  
5 disagree, but if you can let him answer I  
6 think it will move things along.

7 BY ATTORNEY MCKEEN:

8 Q. I'm just looking for the number,  
9 Dr. Hayter. Is it the top 6? Is it the top  
10 5 percent?

11 ATTORNEY SEELEY: Objection to form.

12 THE WITNESS: So when I said [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 Now, as I explained, in order to  
18 actually identify those precisely, one would  
19 need all of the information in the V3  
20 datasets, which I do not have.

21 So I have not been able to analyze the  
22 entire V3 datasets with full information on  
23 physician's compensations and physicians'  
24 individual recommendations.

25 So without that knowledge, it's

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1 impossible to precisely specify what that  
2 number of physicians would be and who they  
3 would be --

4 BY ATTORNEY MCKEEN:

5 Q. And you've said that --

6 A. -- in my opinion.

7 Q. -- that's because you're looking for  
8 physicians that would substantiate plaintiffs'  
9 claims? Do I have that right?

10 ATTORNEY SEELEY: Objection to form.  
11 Misstates the testimony.

12 BY ATTORNEY MCKEEN:

13 Q. What did you mean by that, when you said  
14 it would be what substantiates plaintiffs' claims?

15 ATTORNEY SEELEY: Objection to form.

16 THE WITNESS: So the plaintiffs' claim  
17 as I understand it and as you've asked me  
18 before, is that there is an association  
19 between the individual physician  
20 recommendations and their total compensation.

21 So as a statistician, I would say, okay,  
22 let's look at the data. Now, my  
23 understanding is the data is not available.  
24 So if the data were available, which would be  
25 complete records on all the physicians and

1           their compensations and their individual  
2           physician recommendations, I would then look  
3           at that complete information and I would  
4           learn what it told me.

5           And that's what a statistician does with  
6           data. A statistician learns from the data.  
7           So I would look at that data and see what it  
8           told me and informed me about the physicians  
9           with the highest compensations.

10          Now, I can't tell you what that analysis  
11          would show because all of that data is not  
12          available. So I can't give you names or  
13          numbers of physicians at the moment.

14       BY ATTORNEY MCKEEN:

15           Q.    Would you look at the data associated  
16           with all of the physicians in the scenario you're  
17           describing?

18           A.    If one wanted to assess the plaintiffs'  
19           claims, yes, I think one should have information on  
20           all of the physician individual evaluation  
21           recommendations and their compensations.

22           Q.    So you wouldn't just look at the data  
23           associated with the most highly compensated  
24           physicians. You would look at the data associated  
25           with the entire group of physicians, correct?

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1 ATTORNEY SEELEY: Objection to form.

2 THE WITNESS: I agree with you, because  
3 you need some context for the physicians with  
4 the highest compensations.

5 BY ATTORNEY MCKEEN:

6 Q. You said earlier that it was your  
7 understanding that plaintiffs' claims were based on  
8 the conduct of the most highly compensated  
9 physicians. Do I have that right?

10 ATTORNEY SEELEY: Objection to form.

11 THE WITNESS: Well, I think you're  
12 confusing things in the way that Dr. Lasater  
13 did in his rebuttal report. I mean,  
14 obviously one wants to look at the physicians  
15 with the highest compensations, and I gave  
16 some examples of that in my first report.

17 So there are tables, I think it's  
18 Section 4 of my first report where just to  
19 illustrate, I took the six highest  
20 compensated orthopedists and neurologists and  
21 neuropsychologists and psychiatrists.

22 Dr. Lasater says, well, you can't just  
23 look at the top six. You have to look at all  
24 of them, like -- he used the word control.  
25 But obviously one would do that, and there's

1 plenty of context for doing that.

2 So when I say that you need to look at  
3 the physicians with the highest  
4 compensations, you shouldn't interpret that  
5 as saying you only look at the physicians  
6 with the highest compensations, because  
7 obviously you need to look at all the  
8 physicians to kind of put that in context.

9 BY ATTORNEY MCKEEN:

10 Q. Why is that context important?

11 A. Because essentially to establish the  
12 relationship, it's like a comparison of the denial  
13 rates of the physicians with the highest  
14 compensations as compared with the other physicians.

15 Q. Have you performed that analysis in  
16 either of your reports?

17 A. I haven't performed it for the entire V3  
18 dataset because that information is not available,  
19 and that's the information that's needed to properly  
20 assess the plaintiffs' claims.

21 Q. Dr. Hayter, we've been talking about the  
22 physicians that have the highest total compensation  
23 as being the sort of core plaintiffs' claims. What  
24 about players who were never evaluated by those most  
25 highly compensated physicians? Have they been



1       harmed in any way, if they were never evaluated by  
2       the most highly compensated physicians?

3               ATTORNEY SEELEY: Objection to form,  
4       scope.

5               THE WITNESS: I just want to clarify  
6       again. When you said the physicians with the  
7       highest compensations, when I say that,  
8       there's sort of an implication that yes, you  
9       look at the physicians with the highest  
10      compensations, but that's in a comparison to  
11      all the other physicians.

12              So Dr. Lasater was making a point where  
13      I only looked at the top six, and he said,  
14      well there has to be a context, and obviously  
15      there has to be a context. I'm aware of  
16      that.

17              So when I say the physicians with the  
18      highest compensations, yes, you look at those  
19      individually, but it's obviously within the  
20      context of all the other physicians, and your  
21      question -- could you just give me the  
22      question again, please, the rest of the  
23      question again?

24      BY ATTORNEY MCKEEN:

25              Q. Yes. So far I don't think you've gotten

1           there. Can the reporter just read my comment back?

2                   ATTORNEY SEELEY: I object to the  
3           prefatory comment.

4                   (The court reporter read the record.)

5                   ATTORNEY SEELEY: The same objection.

6                   THE WITNESS: I think it's impossible  
7           for me to say whether a particular player has  
8           been harmed or not.

9           BY ATTORNEY MCKEEN:

10                  Q. What would you need to know to figure  
11           out whether a particular player had been harmed or  
12           not?

13                   ATTORNEY SEELEY: Objection to form,  
14           scope.

15                   THE WITNESS: Well, first I'd like to  
16           investigate the plaintiffs' claims properly  
17           by having the complete information on the V3  
18           datasets available.

19           BY ATTORNEY MCKEEN:

20                  Q. What information --

21                  A. To get the related compensations of the  
22           physicians.

23                  Q. What else would you need to know,  
24           Dr. Hayter?

25                  A. I'm sorry. What are you asking me?

1 Q. I'm asking you what else you would need  
2 to know to determine whether a particular player had  
3 been injured in a given circumstance.

4 ATTORNEY SEELEY: Objection to form and  
5 scope.

6 THE WITNESS: As I said, I would start  
7 off by doing a proper and complete analysis  
8 of the V3 datasets and physician  
9 compensations, if all of that information was  
10 made available, and then I would go from  
11 there.

12 BY ATTORNEY MCKEEN:

13 Q. How would you go from there? What else  
14 would you look at?

15 A. I don't know until I've had the  
16 opportunity to do that analysis.

17 Q. And that's not an analysis you've  
18 undertaken to do, for the reasons you've just  
19 described?

20 ATTORNEY SEELEY: Objection to form.

21 THE WITNESS: It's not possible for me  
22 to do an analysis of all the full information  
23 of the V3 datasets and compensations, because  
24 that data is not available to me.  
25

1 BY ATTORNEY MCKEEN:

2 Q. To determine whether a particular player  
3 suffered any sort of harm as the result of a  
4 particular physician's conduct, would you also need  
5 to know what the outcome of their particular  
6 application or appeal should have been if the  
7 physician had acted properly?

8 ATTORNEY SEELEY: Objection to form,  
9 scope.

10 THE WITNESS: Okay. So you did start  
11 that off I believe with physician -- harm to  
12 a player, so do you want to clarify what kind  
13 of harm we're talking about?

14 BY ATTORNEY MCKEEN:

15 Q. I'm talking about the injury that's been  
16 theorized by plaintiffs in their lawsuit,  
17 Dr. Hayter.

18 A. So you're asking me about, like, the  
19 legal harm --

20 Q. Yes.

21 A. -- not like a physical medical harm.

22 Q. Yes.

23 A. Could you please ask me --

24 ATTORNEY SEELEY: Objection to form.

25 THE WITNESS: Sorry, counsel.

1 BY ATTORNEY MCKEEN:

2 Q. Dr. Hayter, to figure out whether a  
3 particular player was harmed by the conduct that  
4 plaintiffs are attacking in this lawsuit, would you  
5 also need to know what the outcome of their  
6 application or appeal should have been --

7 ATTORNEY SEELEY: Objection.

8 BY ATTORNEY MCKEEN:

9 Q. -- if the particular neutral physician  
10 at issue had acted properly?

11 ATTORNEY SEELEY: Objection to form and  
12 scope.

13 THE WITNESS: I'm not comfortable  
14 expressing opinions on whether individual  
15 players have been harmed or not from a legal  
16 perspective, and I think the most helpful  
17 thing I can say with respect to your  
18 questions is that I think any question about  
19 legal harm, you can only really understand  
20 and answer that properly if you have the full  
21 data necessary to investigate the plaintiffs'  
22 claims, which I've explained.

23 So from my position as a statistician,  
24 you need all of that data so that you can  
25 properly investigate the plaintiffs' claims,

1           and then I think all of these issues you're  
2           asking about with respect to player harm  
3           would sort of follow on from that.

4       BY ATTORNEY MCKEEN:

5           Q.    What information is it that you think is  
6           missing from the V3 dataset that you were provided  
7           to enable that kind of analysis?

8           ATTORNEY SEELEY:  Objection to form.

9           THE WITNESS:  So the V3 datasets which I  
10          think -- it's my understanding they've been  
11          provided by the defendants, so one thing is  
12          the time period.  I mean, obvious -- I think  
13          there's essentially a starting period of  
14          June -- sorry, January 2018, I think.  So  
15          statisticians always say more data the  
16          better, so that's what I'll say.  If data  
17          were available before 2018, that would be  
18          preferable.

19          But even within that time period, at a  
20          minimum, if I were to ask to analyze that  
21          with respect to the plaintiffs' claims, at a  
22          minimum I would want to know all of the  
23          individual physician recommendations and with  
24          respect to what claim, what benefit type they  
25          were evaluating.

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1                   And I think it would also be useful to  
2                   have information from the defendants on the  
3                   exact compensations provided to the  
4                   physicians.

5           BY ATTORNEY MCKEEN:

6                   Q.    Anything else?

7                   A.    As I said, I believe that's a minimum.  
8                   There may be more things, but that's what occurs to  
9                   me, certainly as a starting point right now.

10                  Q.    Anything else you can think of right  
11                  now?

12                          ATTORNEY SEELEY:  Objection to form.

13                          THE WITNESS:  There may be other obvious  
14                          things that are not occurring to me, but that  
15                          seems to me the important things at this  
16                          point in time.

17           BY ATTORNEY MCKEEN:

18                   Q.    It can't be that obvious if they're not  
19                   occurring to you, right?

20                          ATTORNEY SEELEY:  Objection to form.

21                          THE WITNESS:  As I said, those two  
22                          things seem to me to be the obvious things,  
23                          the individual recommendations of the  
24                          physicians and their total compensations, but  
25                          there may be other equally obvious things

1           that are not occurring to me.

2           Also, once you start analyzing, you  
3           might find things that suggest to you, oh, we  
4           need that as well to have a complete  
5           understanding, and that may not be obvious  
6           until one has, you know, at least received  
7           the information I just mentioned and started  
8           analyzing it.

9           BY ATTORNEY MCKEEN:

10          Q.    On [REDACTED] of your report, you say,

11           [REDACTED]  
12           [REDACTED]  
13           [REDACTED]  
14           [REDACTED]  
15           [REDACTED]

16                   Do you see that?

17          A.    I do see that, on [REDACTED] which is  
18           within this [REDACTED] with regards to [REDACTED]

19           [REDACTED]

20          Q.    Dr. Hayter, is it your opinion that to  
21           prepare an accurate analysis of the plaintiffs'  
22           claims, you'd have to look at each of the individual  
23           recommendations of all the evaluating physicians?

24                   ATTORNEY SEELEY:  Objection to form.

25                   THE WITNESS:  Potentially, yes.



1 BY ATTORNEY MCKEEN:

2 Q. I'm sorry, I think counsel cut off your  
3 answer. Did you say yes?

4 A. I said potentially, yes.

5 Q. Why potentially?

6 A. It seems to me that the plaintiffs'  
7 claims are with regards to all of the physicians and  
8 necessarily all of their individual recommendations.  
9 So just starting from there, it seems that yes, one  
10 would need all of the individual recommendations of  
11 all of the physicians.

12 Now, as I said to you, once you start an  
13 analysis, you might learn new things, so you might  
14 realize some of that information is redundant, but I  
15 think potentially, yes, all of it.

16 Q. Would you have to look at the individual  
17 physician's reports on each player, in your opinion?

18 ATTORNEY SEELEY: Objection to form.

19 THE WITNESS: I think you would need to  
20 accurately know the physician's individual  
21 recommendations, and however one was able to  
22 do that I think is what one would need to do.

23 BY ATTORNEY MCKEEN:

24 Q. Would you need to know whether that  
25 individual physician's recommendation was correct or

1 incorrect medically?

2 ATTORNEY SEELEY: Objection to form.

3 THE WITNESS: That's sort of outside of  
4 my expertise, whether it's correct or  
5 incorrect medically. I mean, I think that is  
6 obviously important information, but with  
7 respect to assessing the relationship between  
8 physicians' individual evaluations and their  
9 compensations, that in the sort of medical  
10 background or relationship with the  
11 individual physician's recommendation is not  
12 needed to specifically investigate that  
13 association, although I'm not claiming that  
14 is not important information.

15 BY ATTORNEY MCKEEN:

16 Q. Dr. Hayter, please turn to [REDACTED] of  
17 your report for me. There is a sentence towards the  
18 bottom of the page that says, [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Do you see that?

25 A. I do see it on [REDACTED] Thank you.

1 Q. Did you perform any analysis to check  
2 for such a relationship even though it might not be  
3 a linear relationship? Is that an analysis you  
4 performed?

5 ATTORNEY SEELEY: Objection to form.

6 THE WITNESS: So this is where  
7 Dr. Lasater has switched from his chi-square  
8 test to what we call a simple linear  
9 regression analysis. It's in response to a  
10 point I made, which is explained on the  
11 previous page, 81. And the point I made,  
12 Dr. Lasater hasn't responded to, he's  
13 proposed -- he's proposed a different  
14 analysis, which to me is not very important,  
15 and I have not investigated it.

16 Although, what I would say is whenever  
17 you do a simple linear regression or  
18 reporting it, the first thing you do is make  
19 a picture, a visual representation of it, to  
20 show everyone because a simple linear  
21 regression analysis is putting a straight  
22 line through a set of data points.

23 And as I -- you wouldn't believe the  
24 number of times I've explained that to  
25 students: Take a look at the data before you

1 fit a line through it, to make sure it makes  
2 sense to fit a line through it.

3 So I'm very suspicious of any simple  
4 linear regression analysis that does not have  
5 a visual representation to go along with it,  
6 but I have not -- I have not spent any time  
7 replicating that analysis.

8 BY ATTORNEY MCKEEN:

9 Q. Just to be clear, my question was  
10 whether you have investigated whether or not there  
11 is such a relationship between these two variables,  
12 even though it may not be linear.

13 It sounds like the answer is no, that's  
14 not something you specifically investigated; is that  
15 right?

16 ATTORNEY SEELEY: Objection to form.

17 THE WITNESS: That's what I said. The  
18 first thing one needs to do here is look at a  
19 picture, look at a visual representation to  
20 see the data points through which the line  
21 has been fitted, to see whether that makes  
22 any sense whatsoever.

23 And as I said, I've not spent time  
24 trying to replicate Dr. Lasater's analysis  
25 here or see if it makes sense, although as I

1           said I'm very suspicious of anything which is  
2           a linear regression analysis which doesn't  
3           have accompanying pictures to actually show  
4           what's going on.

5       BY ATTORNEY MCKEEN:

6           Q.    This section -- on this page of your  
7       report, [REDACTED]  
8       [REDACTED], and I understand your  
9       critiques, [REDACTED]  
10      [REDACTED]?

11          A.    And again, you're still referring to  
12      [REDACTED] of my rebuttal report, right?

13          Q.    That's correct, sir. Thank you.

14          A.    So I think the context is in [REDACTED],  
15      because what I explained to the judge is that [REDACTED]  
16      [REDACTED]  
17      [REDACTED], so this is what is in my  
18      initial report and explained on [REDACTED] of my  
19      rebuttal report, [REDACTED]  
20      [REDACTED]  
21      [REDACTED].

22                I thought that was important information  
23      to provide the judge. Dr. Lasater has not responded  
24      to that. He's proposed a different analysis, which  
25      he says is a more appropriate analysis, but in no

1 way does it affect the analysis that I showed.

2 And then as I said, it's not something  
3 I've spent time on because it's not important to me.  
4 Although it violates what I consider elementary  
5 aspects of a simple linear regression analysis,  
6 which is if you're making a claim that it's  
7 meaningful to do a simple linear regression  
8 analysis, then you're making a claim that it makes  
9 sense to fit a straight line through the data.

10 And I also have questions about the  
11 data, because it's the data of evaluations that  
12 Dr. Lasater is not included all evaluations and  
13 we'll probably have a chance to talk about that.

14 My analysis, which was on the previous  
15 page, [REDACTED], [REDACTED]

16 [REDACTED]  
17 [REDACTED] He's analyzing decision outcomes and  
18 not physician evaluations, but as I say, I'm  
19 suspicious of anything here which doesn't have a  
20 simple, clear visual interpretation to go along with  
21 it.

22 Q. Dr. Hayter, that wasn't my question. Do  
23 you understand that you're here to answer my  
24 questions today?

25 ATTORNEY SEELEY: Objection to form.

1 BY ATTORNEY MCKEEN:

2 Q. Yes or no?

3 A. I do understand that, ma'am, and I'm  
4 doing my very best to answer your questions as  
5 completely and accurately as possible.

6 Q. Okay. So my question was whether you  
7 found any error in Dr. Lasater's mathematical  
8 calculations. Yes or no?

9 ATTORNEY SEELEY: Objection to form.

10 THE WITNESS: As I have explained, the  
11 error I see here is not including any visual  
12 interpretation of what's going on. There are  
13 errors in my opinion in the actual variables  
14 that have been analyzed by Dr. Lasater here.

15 Although, as I have explained, I have  
16 not done any of my own analysis here to  
17 replicate Dr. Lasater's analysis.

18 BY ATTORNEY MCKEEN:

19 Q. Dr. Hayter, to be clear, if I ask you a  
20 question about something, it's not an invitation for  
21 you to answer a different question or to tell me  
22 what you think is interesting. I am here to get  
23 answers to my questions today while you're under  
24 oath and your counsel has represented to me that I  
25 only have a limited amount of time in which to do

1       that.

2                       So I would just ask that you listen to  
3       my question and answer that question instead of  
4       giving me a speech about a topic that you find  
5       interesting that doesn't answer my question.

6                       Can you do that for me, please?

7                       ATTORNEY SEELEY: Let me object to the  
8       instruction. It's entirely improper. You're  
9       badgering the witness. He's answering your  
10      questions. He's allowed to explain his  
11      answers. The parties have agreed to a three  
12      and a half hour time limit on your  
13      questioning today which will govern this  
14      deposition.

15                      ATTORNEY MCKEEN: Are you finished,  
16      Caleb?

17                      ATTORNEY SEELEY: I am finished.  
18      There's no pending question. So there's  
19      nothing Dr. Hayter needs to answer. But if  
20      you want to ask him a question and proceed  
21      with the deposition, go ahead.

22                      ATTORNEY MCKEEN: Let's take a break and  
23      go off the record.

24                      ATTORNEY SEELEY: Okay. We can go off  
25      the record.



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1 THE VIDEOGRAPHER: This marks the end of  
2 Media Unit Number 2. Going off record. The  
3 time is 12:56 p.m.

4 (Break in proceedings.)

5 BY ATTORNEY MCKEEN:

6 Q. Dr. Hayter, we've just taken a brief  
7 break. Do you understand that you're still under  
8 oath, sir?

9 A. Yes, I do. Thank you.

10 Q. Did you discuss your testimony with  
11 anybody while we were on the break?

12 A. No, I did not.

13 Q. On [REDACTED] of your report, you  
14 say, [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Did I read that correctly?

21 A. I'm not sure.

22 Q. Take as much time as you need to get to  
23 that page of the report.

24 A. I am looking at the bottom of [REDACTED]  
25 and the top of [REDACTED]

1 Q. Okay. So do you see the portion I just  
2 read into the record?

3 A. I believe you were reading the sentence  
4 that began at the bottom of [REDACTED] and ended at the  
5 top of [REDACTED].

6 Q. That is correct. So you say that

7 [REDACTED]

8 [REDACTED].

9 [REDACTED]

10 [REDACTED]

11 ATTORNEY SEELEY: Objection to form.

12 THE WITNESS: So this is in reference to  
13 Figures 2.1 to 2.8 of my first report. I  
14 would like to open up my first report and  
15 look at those figures. Is that all right?

16 ATTORNEY MCKEEN: If that's helpful to  
17 you, that's just fine. Let's pull up what  
18 was previously marked as Exhibit 3 to your  
19 deposition.

20 If it's possible to screen share that  
21 here in the depo, if our tech could make that  
22 happen, that would be really helpful. I want  
23 to make sure we're looking at the same thing.

24 (Exhibit 9 marked for identification.)  
25

1 BY ATTORNEY MCKEEN

2 Q. In the meantime, Dr. Hayter, is there --  
3 do you have your report in front of you on your  
4 computer, your original report?

5 A. I do have my original report open.

6 Q. Is there a particular page number you  
7 want to direct us to?

8 A. You could go to Page 151.

9 Q. Is this the page that you're directing  
10 us to, Dr. Hayter?

11 A. Yes. Thank you, ma'am.

12 Q. Okay.

13 A. So again, this is Dr. Lasater's reduced  
14 dataset. This is T&P applications for neurologists,  
15 but there's seven additional figures on the next  
16 pages that go together with this.

17 So as I explained, what was important to  
18 me was the relationship shown with the blue dots  
19 which I illustrated with that shaded red area which  
20 is empty which says, "no physicians here," because  
21 that's consistent with and supportive of the  
22 plaintiffs' claims. I also thought it would be  
23 helpful to the judge to provide some summary  
24 statistic numbers, which is the 40 percent which you  
25 are referring to.

1                   So as you can see, at the bottom of  
2                   Page 151, I explained that the nine neurologists  
3                   whose individual recorded denial rates were  
4                   40 percent or less had an average of five  
5                   evaluations each, and the 19 neurologists whose  
6                   individual recorded denial rates were greater than  
7                   40 percent had an average of 15.4 evaluations each,  
8                   and it seems to me that's important information  
9                   because it's one way of understanding the  
10                  relationship between the recorded denial rates and  
11                  the number of evaluations.

12                 Now, I know you're asking me about the  
13                 40 percent, and you asked me in my first deposition,  
14                 and I explained, well, I just looked at the data and  
15                 that seemed to be a good number to make my point,  
16                 and there's nothing wrong with that. That's what  
17                 statisticians do, they learn from the data, they  
18                 extract information from the data, but I could have  
19                 used 20 percent, 10 percent, 35 percent, 55 percent,  
20                 probably 60 percent, and it would have made the same  
21                 point.

22                 If you look at the last four graphs  
23                 here, I use 50 percent, but I could have used other  
24                 numbers as well.

25                 If you go too high, so if you went to

1       like .8 percent, it might flip around. This is the  
2       graph where Dr. Lasater put like the blue area at  
3       the top. So if you went too high, this may flip  
4       around, but the point is for numbers 10, 20, 30, 40,  
5       50 percent, you're going it essentially see that  
6       same result that I've summarized there.

7               Q.    What do you mean when you say flip  
8       around?

9               A.    Well, for example, like there's one  
10      point at the top there which is number of  
11      evaluations is very small, I suppose, maybe one or  
12      two, and the recorded denial rates are 100 percent.  
13      There's at least two physicians there because you  
14      can see there's sort of physician ID numbers  
15      overwritten. So those two or three physicians had a  
16      very small number of evaluations but actually had  
17      the highest recorded denial rates of 100 percent.

18              Q.    And that's inconsistent with plaintiffs'  
19      theory of the case, isn't it?

20                   ATTORNEY SEELEY:  Objection to form.

21                   THE WITNESS:  Not really, because you  
22      need to look at the entirety of the data, and  
23      what the entirety of the data here is that --  
24      important thing is that red shaded area,  
25      which is consistent throughout all eight of

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1           these graphs and 16 of the graphs which are  
2           probably going to come to -- with respect to  
3           Exhibits A and B.

4           So there were 24 graphs in total that I  
5           showed in my first report which consistently  
6           have this empty area which I've shaded red.

7           BY ATTORNEY MCKEEN:

8           Q.     Just to be clear, Dr. Hayter, when you  
9           testified to me just a moment ago about not wanting  
10          something to flip around, what you meant was you  
11          wouldn't want to be making the opposite point of  
12          what you're trying to make here, right? That's what  
13          you meant by flip around, isn't it?

14          ATTORNEY SEELEY:   Objection to form.  
15          Misstates the testimony.

16          THE WITNESS:   Well, it is not a valid  
17          point, because what's important here is the  
18          large red shaded area.

19          BY ATTORNEY MCKEEN:

20          Q.     Other than your visual assessment, what  
21          accepted statistical principle would provide you  
22          with guidance on which percentage to choose here?  
23          Did you use anything other than your visual  
24          assessment?

25          ATTORNEY SEELEY:   Objection to form.

1 THE WITNESS: As I've said, I chose  
2 these numbers because I thought they would  
3 provide useful summary statistics for the  
4 judge, but there were other numbers I could  
5 have used which would have made the same  
6 point.

7 BY ATTORNEY MCKEEN:

8 Q. And you wanted to make sure you were  
9 making the same point and not the flipped around  
10 point where you are emphasizing that there are in  
11 fact physicians with very few evaluations and very  
12 high denial rates, right? You didn't want to  
13 emphasize those, did you?

14 ATTORNEY SEELEY: Objection to form.  
15 Misstates the testimony.

16 THE WITNESS: I wanted to summarize the  
17 points that I learned from these graphs with  
18 the consistent empty, rich, large, red shaded  
19 areas.

20 BY ATTORNEY MCKEEN:

21 Q. And you wanted to make sure those points  
22 were consistent with plaintiffs' theory of the case,  
23 didn't you?

24 ATTORNEY SEELEY: Objection to form.

25 THE WITNESS: It was plaintiffs'

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1 theory -- well, you said theory of the case.  
2 I'll say plaintiffs' claims, which is what I  
3 have said, it was plaintiffs' claims which  
4 enabled me to realize that it was the empty  
5 red shaded areas that were important.

6 BY ATTORNEY MCKEEN:

7 Q. Would a different statistician looking  
8 at the same graph select a different cutoff point  
9 for their analysis?

10 ATTORNEY SEELEY: Objection to form.

11 THE WITNESS: When you say cutoff point,  
12 you're referring to the 40 percent in the  
13 first four graphs and 50 percent in the  
14 second set of four graphs, correct?

15 BY ATTORNEY MCKEEN:

16 Q. Yes, sir.

17 A. I could have selected different numbers,  
18 as I said.

19 Q. And in fact, you did, because sometimes  
20 you used 40 and sometimes you used 50, right?

21 ATTORNEY SEELEY: Objection to form.

22 THE WITNESS: That's correct. I used 40  
23 for the first four graphs, which are  
24 applications, and 50 for the second four  
25 graphs of appeals. And that makes sense



1           because for appeals, the denial rates of all  
2           of the physicians tend to be higher, so the  
3           blue dots sort of move up in appeals as  
4           compared with applications.

5           BY ATTORNEY MCKEEN:

6           Q.    The dots themselves already show you  
7           where the dots are, right? Why do you need to shade  
8           any area to show where the dots aren't? Don't the  
9           dots themselves kind of already do that work for  
10          you?

11          ATTORNEY SEELEY:  Objection to form.

12          THE WITNESS:  But it's my job to help  
13          the judge understand what's important about  
14          the placement of these blue dots, so I  
15          thought it would be helpful to clarify what  
16          is important about the placement of the blue  
17          dots by shading the large empty areas red.

18          BY ATTORNEY MCKEEN:

19          Q.    Take this exhibit down.

20                Dr. Hayter, can you turn with me to  
21          [REDACTED] of your August 15th, rebuttal report?

22          A.    I am on [REDACTED]

23          Q.    On this page, [REDACTED]

24          [REDACTED] is that  
25          correct?

1 A. So this is [REDACTED], which is the [REDACTED]  
2 page of [REDACTED] and the heading is [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 Q. Neuropsychologists have higher  
9 examination fees, don't they?

10 A. That is correct. As far as I  
11 understand, it is \$5,000 for neuropsychologists,  
12 compared with -- I'm just reading from Dr. Lasater's  
13 report on Page 109. He says it's \$3,000 for the  
14 other physicians.

15 Q. Dr. Hayter, do you have an opinion about  
16 whether neuropsychologists receiving a higher  
17 examination fee makes them more or less likely to be  
18 biased?

19 A. I have never expressed an opinion on  
20 that. Although, as you'll see from my rebuttal  
21 report, Dr. Lasater seems to have invented a  
22 hypothesis which he attributed to me, though I never  
23 expressed anything like that.

24 Q. So that is not an opinion that you  
25 intend to express in this case?

1           A.    Not at the moment, based on the  
2           information I have available to me at the moment.

3           Q.    Why do you think Dr. Lasater should have  
4           conducted a separate analysis for  
5           neuropsychologists, if the difference in fee isn't  
6           any sort of indicator of bias?

7           ATTORNEY SEELEY:  Objection to form.

8           THE WITNESS:  Well, your question there  
9           was sort of twofold.  It says why do I think  
10          physician types need to be evaluated  
11          separately.  And I explained that in detail  
12          in my initial report, why it's important to  
13          analyze the different physician types  
14          separately.  So that's in my initial report.

15          But then you said why is it important to  
16          analyze physician types separately  
17          because --are you trying to relate this to  
18          the difference in the fees?

19       BY ATTORNEY MCKEEN:

20          Q.    I'm trying to ask if you think that  
21          that's an important part of why physician types  
22          ought to be analyzed separately?

23          ATTORNEY SEELEY:  Objection to form.

24          THE WITNESS:  Do you mind if I refer to  
25          my initial report?

1 BY ATTORNEY MCKEEN:

2 Q. Do you need to do that to answer my  
3 question?

4 A. Yes.

5 Q. Then by all means.

6 A. So somewhere in my initial report -- you  
7 might be able to find it quicker than me -- I have a  
8 section -- maybe Caleb knows what it is.

9 Q. We're not going to let Caleb testify  
10 today, but --

11 A. I found it. It's Section 1.5. It's on  
12 Page 105, and this is my initial report.

13 Q. Okay.

14 A. So I'm looking at Page 105, and this is  
15 where I explain why it's important to analyze the  
16 different physician types separately.

17 In the middle of Page 105, I say this is  
18 because with respect to neurologists, say, it is  
19 claimed by the plaintiffs that the evaluations that  
20 require a neurologist have been assigned  
21 disproportionately to specific neurologists rather  
22 than to other neurologists. A proper and insightful  
23 way to investigate this claim is to perform an  
24 analysis of neurologists separately from the other  
25 physician types. And to me, that's sort of clear

1 and obvious. And then I make the same point with  
2 respect to neuropsychologists and orthopedists and  
3 psychiatrists.

4 To answer your question, that's got  
5 nothing to do directly with the different  
6 compensations paid to neuropsychologists as compared  
7 with the other physician types. The problem is I  
8 was responding to Dr. Lasater's analysis, and in  
9 Dr. Lasater's analyses in 2024, last year, none of  
10 his analysis looked at physician types separately,  
11 and so I'm explaining here that, well, you do need  
12 to look at physician types separately.

13 And the point I'm making is that if you  
14 don't look at physician types separately, then the  
15 issue of the different compensations, it's  
16 mathematically a problem because ranking of  
17 evaluations does not mathematically correspond to  
18 ranking of compensations from evaluations.

19 But if you analyze the physician type  
20 separately, which obviously makes sense, then the  
21 issue of the different compensation amounts doesn't  
22 matter anymore.

23 Q. Dr. Hayter, let's look at [REDACTED] of  
24 your rebuttal report. You say [REDACTED]  
25 [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Is it your opinion that Form 5500s are a better source for measuring physician compensation than encounter data?

A. Well, when you say encounter data, you have to be careful what you mean by that because Dr. Lasater obviously, as you know, used encounter data, and he says that's a proxy for a physician's compensation. But that only makes sense if you were to use all of the encounters of a physician.

So let's suppose Caleb is a physician. He gets income from all of his player evaluations, which is all of his encounters, and then he could get additional compensation from like attending workshops or as a consultant or from expenses.

But if you're going to use encounters, you would need to use the sum of all those encounters. One of the problems with Dr. Lasater's analyses from 2024, last year, is that he never used all encounters. He kind of sliced and diced, so he would just have, say, encounters for a physician

1       doing application LODs for medical.

2               So he never actually looked at a  
3       physician's total encounters. In one of his  
4       analysis in his rebuttal report, he did look at  
5       total encounters, but for all the other analysis in  
6       his rebuttal report, he didn't look at total  
7       encounters either.

8               So your question about encounters versus  
9       the Form 5500s, I mean, for a start you have to say  
10      if you're going to use encounters, you should have  
11      all encounters, which is not what Dr. Lasater did.

12              But it's also my opinion that there is  
13      additional information in the Form 5500s,  
14      particularly the six or seven consultants, because  
15      the consultancy fees are quite high, and if you only  
16      look at encounters, you may not be able to identify  
17      the physicians with the highest compensations  
18      without taking into account those consulting fees.

19              So if you are only using encounters, I  
20      think you need to add in the consulting fees as  
21      well. And then I do think expenses can also be a  
22      valid form of compensation.

23              Q. Dr. Hayter, you testified about this at  
24      length in your last deposition, about the fact that  
25      expenses aren't the same as other forms of

1 compensation. Do you remember that?

2 ATTORNEY SEELEY: Objection.

3 THE WITNESS: I do remember, but the  
4 references to my testimony has been taken out  
5 of context in Dr. Lasater's rebuttal report,  
6 and it does not reflect my true opinions.

7 BY ATTORNEY MCKEEN:

8 Q. How so?

9 A. Well, in my last deposition, you were  
10 asking me about my expenses, and I was providing you  
11 testimony about my expenses. So whenever I submit  
12 expenses, it's generally for travel, which luckily  
13 we don't have to do so much of now that we can all  
14 get on Zoom.

15 But before COVID, I'd have to fly  
16 somewhere for a deposition and stay in a hotel, so  
17 I'd have to pay money out of my own pocket for my  
18 airfare, for my hotel fair and everything. So I  
19 would be sort of negative. I'm out of pocket for  
20 the money I spent. And then I would select all of  
21 my receipts and hopefully they'd get paid and that  
22 would bring me back to like zero.

23 So for me, coming back to zero for the  
24 money I've already paid out is very different to  
25 like income coming in for my time. But I don't



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1 think that's necessarily the case with expenses for  
2 physicians, and I know that people -- I've seen that  
3 everyone seems to give the example of x-rays, but my  
4 experience with x-rays is like when I go to a  
5 dentist to have my teeth cleaned, I expect to pay to  
6 have my teeth cleaned and then somebody walks in and  
7 says, oh, you're due for your x-rays, and they take  
8 you off to another room and they take all the x-rays  
9 and then they add \$200 or something to the bill, but  
10 it didn't cost the dentist \$200 to take my x-rays.  
11 It only cost them the electricity and the time they  
12 spent evaluating them. So I consider that a sort of  
13 income to the dentist.

14 So if physicians are doing the same  
15 thing, it is income to their practice, which they  
16 may say needs to go towards paying for the x-ray  
17 machine and everything, but it is still sort of  
18 compensation as a benefit to that physician.

19 Q. Dr. Hayter, have you done any actual  
20 analysis in this case of how physicians handle the  
21 sort of expenses that they are compensated for by  
22 the plan?

23 ATTORNEY SEELEY: Objection to form.

24 THE WITNESS: What I know is just my  
25 general understanding that it has been

1 explained that the Form 5500s can include  
2 expenses, and as an example of expenses, I've  
3 seen x-rays given.

4 BY ATTORNEY MCKEEN:

5 Q. But you don't actually know, do you,  
6 whether physicians do have to go out of pocket for  
7 x-rays or whether or not they use third-party  
8 providers for such things. You haven't undertaken  
9 an actual analysis of any of that in this case, have  
10 you?

11 A. I have not, because as far as I  
12 understand, that information is not available.

13 Q. Okay. But so you haven't looked at that  
14 issue at all in this case, have you?

15 ATTORNEY SEELEY: Objection to form.

16 THE WITNESS: Well, I have, in the sense  
17 that it's my understanding that the  
18 Form 5500s include expenses, and because of  
19 the example I've given, I can understand how  
20 expenses might be considered as part of  
21 compensation. But beyond that, I haven't  
22 looked at any expenses in detail because I  
23 don't believe that information is available.

24 BY ATTORNEY MCKEEN:

25 Q. So you don't know for any given

1 physician or other medical entity for which expenses  
2 they may have actually gone out of pocket versus  
3 not. You don't know that one way or the other, do  
4 you?

5 ATTORNEY SEELEY: Objection to form.

6 THE WITNESS: I don't know specific  
7 details, because as I said, I understand that  
8 information is not available.

9 BY ATTORNEY MCKEEN:

10 Q. And so there could be some expenses for  
11 which physicians came out of pocket, and there could  
12 be others that are more like the dentist example  
13 that you gave, right?

14 ATTORNEY SEELEY: Objection to form.

15 BY ATTORNEY MCKEEN:

16 Q. There could be different kinds, couldn't  
17 there?

18 ATTORNEY SEELEY: The same objection.

19 THE WITNESS: As I said, I don't know  
20 the details.

21 BY ATTORNEY MCKEEN:

22 Q. You mentioned the consulting fees, and I  
23 think you mentioned that those get paid to about six  
24 or seven physicians only; is that correct?

25 ATTORNEY SEELEY: Objection to form.

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1 THE WITNESS: That is my understanding.

2 Yes, ma'am.

3 BY ATTORNEY MCKEEN:

4 Q. What's your understanding of how those  
5 fees factor into plaintiffs' case?

6 ATTORNEY SEELEY: Objection to form.

7 THE WITNESS: My understanding is that  
8 that is compensation to those physicians, and  
9 the plaintiffs' claims relate to the  
10 compensations of physicians.

11 BY ATTORNEY MCKEEN:

12 Q. Do you understand one way or the other  
13 whether it's plaintiffs' claim that those consulting  
14 fees cause any of those six or seven physicians to  
15 be biased?

16 ATTORNEY SEELEY: Objection to form.  
17 Scope.

18 THE WITNESS: Again, I think we've been  
19 here before. I think you used the word  
20 "cause" there, and I don't want to speak for  
21 the plaintiffs with regards to what their  
22 claims of causality are.

23 I would simply say as a statistician, I  
24 am interested in data wise the association or  
25 possible association between a physician's

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1 evaluations, individual evaluations and their  
2 total compensation. So as a statistician, I  
3 can recognize that since the consulting fees  
4 are part of a physician's total compensation,  
5 it's important to take those into account.

6 BY ATTORNEY MCKEEN:

7 Q. You understand plaintiffs' case to  
8 include any allegations that relate to the  
9 compensation that physicians receive for, I think  
10 you mentioned, workshops. Is that also encompassed  
11 by plaintiffs' claims?

12 A. I think --

13 ATTORNEY SEELEY: Objection.

14 THE WITNESS: -- workshops -- sorry,  
15 Caleb.

16 ATTORNEY SEELEY: No, that's my fault.  
17 I'm just going to put an objection to form  
18 and scope.

19 You can answer.

20 THE WITNESS: I did use the word  
21 "workshops," and I think they're also  
22 referred to as honoraria. So they contribute  
23 to the physician's total compensation, and  
24 obviously, as we said, the plaintiffs' claims  
25 relate to the physician's total compensation.

1           So in a sense, the honoraria do sort of  
2           contribute to total compensation which is  
3           part of the plaintiffs' claims, but the  
4           plaintiffs' claims, you know, relate to  
5           identifying the physicians with the highest  
6           total compensations, and I don't know for  
7           sure, but it may be the case that in terms of  
8           identifying the plaintiffs with the highest  
9           total compensations, it doesn't actually make  
10          any difference whether you take into account  
11          these, I'll just call them workshop fees,  
12          because my understanding is that everybody  
13          gets it maybe once every two years.

14          So if everybody is getting it, it just  
15          sort of moves all the physicians'  
16          compensations up, but it wouldn't affect the  
17          determination of a physician's total -- it  
18          wouldn't affect the determination of the  
19          physicians who have the highest total  
20          compensations, but there's nothing wrong with  
21          including those workshop fees in the  
22          physician's total compensations. It just  
23          might not make a difference in identifying  
24          the physicians with the highest total  
25          compensations.

1 BY ATTORNEY MCKEEN:

2 Q. Dr. Hayter, let's look at [REDACTED] of  
3 your report.

4 A. And we're on my rebuttal report, right?

5 Q. Yes. Thank you, sir.

6 A. I am on [REDACTED].

7 Q. At the bottom of the page, you say,

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 What's your basis for that opinion?

13 ATTORNEY SEELEY: Objection to form.

14 THE WITNESS: It's basic elementary  
15 statistical principles.

16 BY ATTORNEY MCKEEN:

17 Q. And what are those statistical  
18 principles?

19 A. The principles are that there's nothing  
20 improper about the two time periods here.

21 Q. What if you compared the same 2009 to  
22 2024 period for physician compensation with the  
23 individual physician recommendations that were only  
24 associated with a single day of physician  
25 recommendations? Would that be improper?

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1 ATTORNEY SEELEY: Objection to form.

2 THE WITNESS: So let's see if I've got  
3 that. You're suggesting that the analysis of  
4 an individual physician's recommendations  
5 should be based upon picking what shall we  
6 say, May the 31st, 2019, and only looking at  
7 the evaluations that occurred on May the  
8 31st, 2019? Is that your question?

9 BY ATTORNEY MCKEEN:

10 Q. Yeah. Would that be proper?

11 ATTORNEY SEELEY: Objection.  
12 Hypothetical.

13 THE WITNESS: My opinion is that looking  
14 at only the individual physician  
15 recommendations that occurred on May the  
16 31st, 2019 would not be informative with  
17 respect to analyzing the plaintiffs' claims.

18 BY ATTORNEY MCKEEN:

19 Q. Why not?

20 A. Because it's because the plaintiffs'  
21 claims don't relate to -- specifically to the  
22 physician evaluations that occurred on May the 31st,  
23 2019. They refer to, in general, all of the  
24 individual recommendations of the physicians.

25 Q. For the time period 2018 to 2024?



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1 ATTORNEY SEELEY: Objection to form.

2 THE WITNESS: Are you asking me whether  
3 the plaintiffs' claims specifically refer  
4 only to the individual physician  
5 recommendations in the time period 2018 to  
6 2024?

7 BY ATTORNEY MCKEEN:

8 Q. Let me ask you a different question,  
9 Dr. Hayter. I'm asking you [REDACTED]  
10 [REDACTED]  
11 [REDACTED].

12 [REDACTED],  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] So let  
17 me ask it differently.

18 From a statistical point of view, would  
19 it be proper to compare physician compensation from  
20 2009 to 2024 to the physician recommendations that  
21 only occurred during a single week in 2023? Would  
22 that be proper from a statistical perspective?

23 ATTORNEY SEELEY: Objection to form.

24 THE WITNESS: Well, it sounds like we've  
25 moved from a day to a week. I mean, I think

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1 the best way to answer your question is to  
2 answer -- to properly investigate the  
3 plaintiffs' claims, one needs as much data as  
4 is available. So it has been decided that  
5 the V3 datasets have been produced for the  
6 time period 2018 to 2024.

7 So consequently, necessarily to do the  
8 best analysis of the plaintiffs' claim based  
9 upon the data available, I would use that  
10 entire time period 2018 to 2024. So I don't  
11 understand any rationale for looking at only  
12 a week's data or a day's data, because the  
13 more data you have, the more insightful  
14 analysis you can do.

15 BY ATTORNEY MCKEEN:

16 Q. What about the time period? Why not  
17 limit the time period to correspond to the time  
18 period for the individual physician recommendations?  
19 In other words, why not look at 2018 to 2024  
20 compensation, because it corresponds to the time  
21 period for the recommendations? Why go back further  
22 in time?

23 ATTORNEY SEELEY: Objection to form.

24 THE WITNESS: If you look at the middle  
25 of page -- the next page, which is [REDACTED],

1 I answer your question.

2 [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 BY ATTORNEY MCKEEN:

13 Q. What if you had physician compensation  
14 data going all the way back to 1970? Do you think  
15 that would be appropriate to compare to individual  
16 physician recommendations for the years 2018 to  
17 2024?

18 A. I think one would have to consider what  
19 physicians were involved. I think one would only do  
20 it for the physicians -- one would only obviously --  
21 one only wants information for the physicians that  
22 conducted evaluations in 2018 to 2024, because  
23 that's the physicians you have the individual  
24 recommendations for. Well, actually you don't  
25 because the V3 dataset doesn't have that

1 information, but that's the only sort of partial  
2 information we have on the physician -- well,  
3 actually it's not even partial information.

4 That's the time period of the V3 dataset  
5 which has some physicians in it. So obviously you  
6 wouldn't want to go back and get compensation for  
7 other physicians.

8 In theory one could, although I think  
9 it's important to understand that even if you're  
10 looking at, say, the time period 2009 to 2024, or I  
11 think you said 1970 to 2024, it's important to  
12 understand that the different physicians that are  
13 included in the V3 dataset, they're not necessarily  
14 getting compensations over all of those years.

15 So if you look at exhibit -- it is now  
16 Exhibit B to my first report, there are a lot of  
17 empty cells where like a physician did not get  
18 compensation in a particular year.

19 So it is important also I think to look  
20 at sort of like average annual compensation as  
21 compared with total compensation. But in general,  
22 the more information you have available to you on a  
23 physician's compensation, the better.

24 Q. So in the hypothetical I gave going all  
25 the way back to 1970 in your opinion would be

1 statistically appropriate?

2 A. I said the more information you have  
3 generally the better, but obviously you need to  
4 think how to analyze that in terms of total  
5 compensation and average annual compensation.

6 Q. Have you undertaken to analyze average  
7 annual compensation, as you just mentioned?

8 A. So I am going to refer you to my first  
9 report here, and I think I can find the part pretty  
10 quickly. So I'm looking at my first report. For  
11 example, on Page 182 of my first report, I have a  
12 table which has annual average compensation, and --  
13 actually, I think I've got eight pages here, eight  
14 pages that start on Page 182 which have annual  
15 average compensation, although I have also looked at  
16 total compensation as well.

17 Q. Dr. Hayter, let me ask a better  
18 question.

19 Have you analyzed annual average  
20 compensation for all of the physicians for whom you  
21 have available data?

22 ATTORNEY SEELEY: Objection to form.

23 THE WITNESS: So I'm looking at Page 182  
24 of my first report. So this is neurologists,  
25 and yes, I believe that's all the

1           neurologists for which I had information  
2           provided in Exhibit B of my first report.

3           And if you look at the subsequent  
4           tables, it will have the other physician  
5           types as well.

6       BY ATTORNEY MCKEEN:

7           Q.   How did your calculation of average  
8           annual compensation take into account what you just  
9           told me about the fact that for certain time  
10          periods, physicians may not have performed any  
11          evaluations?

12          A.   I'm looking in my first report where I  
13          explained to you how I calculated the annual  
14          average -- so if you look at Page 180 -- so this is  
15          my first report, and if you look at the bottom  
16          paragraph on Page 180, I explain that the  
17          physicians' total compensations are the sums of all  
18          the compensations for the physicians that are  
19          provided in Exhibit B for all years, while the  
20          physician's annual average compensations are the  
21          average compensations provided in Exhibit B for  
22          years in which a physician receives some  
23          compensation.

24          Q.   I was just briefly disconnected from the  
25          Zoom. I don't know if that happened to others or

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1 not?

2 ATTORNEY SEELEY: No, it didn't. He can  
3 repeat that, the answer.

4 ATTORNEY MCKEEN: If Dr. Hayter was  
5 testifying and I wasn't around, I want to  
6 know what the answer was.

7 Can the court reporter read Dr. Hayter's  
8 testimony, please.

9 (The court reporter read the record.)

10 BY ATTORNEY MCKEEN:

11 Q. Just so I understand your testimony,  
12 Dr. Hayter. If a physician performed a single  
13 evaluation in a particular year, that's good enough  
14 for that to factor into how you calculate their  
15 average annual compensation the way you've performed  
16 your analysis; is that correct?

17 ATTORNEY SEELEY: Objection to form.

18 THE WITNESS: I'm not sure exactly what  
19 you mean there. You said if a physician  
20 performs only one evaluation in a year.

21 So, I mean, I think the first question  
22 would be whether that income would be  
23 recorded in Exhibit B, because as you know,  
24 the information in Exhibit B is obtained from  
25 the Form 5500s, and I think there was like --

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1 is it \$5,000 trigger that if it's less than a  
2 certain amount, the form doesn't exist.

3 I think to answer your question, is any  
4 evaluation, whether it was just a single one  
5 or not, as long as it's represented in a  
6 Form 5500, so then it will be some income in  
7 that year, then the income in that year will  
8 obviously be a component of my total  
9 compensation that I used in those figures we  
10 were looking at, and if there is some  
11 compensation in that year as recorded in  
12 Exhibit B, it will contribute to a  
13 calculation of the physicians' average annual  
14 income as shown in those tables and figures  
15 in my first report.

16 BY ATTORNEY MCKEEN:

17 Q. I'll ask you another hypothetical,  
18 Dr. Hayter, just to make sure I understand your  
19 testimony on this point.

20 So if a physician received \$100,000 of  
21 compensation from the plan in 2019 and then \$1,000  
22 of compensation from the plan on January 1st of  
23 2020, under your analysis, you would say that that  
24 physician's average annual compensation was \$50,500,  
25 because that's the \$100,000 plus \$1,000, divided by



1 two, over those two years in which there was  
2 compensation; do I have that correct?

3 ATTORNEY SEELEY: Just for the sake of  
4 clarity, are you just doing math, or are we  
5 trying to get specific about plan, financial  
6 years?

7 ATTORNEY MCKEEN: I'm just doing math,  
8 Caleb. I'm not trying to be --

9 ATTORNEY SEELEY: Fair enough.

10 ATTORNEY MCKEEN: -- controversial. I  
11 think one of my colleagues, Caleb, would say  
12 I'm not even doing math. I'm just doing  
13 arithmetic.

14 THE WITNESS: So to answer your  
15 question, I think you probably meant this,  
16 but you didn't say it, but I think your  
17 implication is that this physician only  
18 received any compensation in these two years  
19 so that they didn't receive any compensation  
20 at all and then suddenly one year they  
21 received \$100,000, and then January 1st they  
22 received \$1,000, I think you said, and then  
23 they never received any other compensation,  
24 right?

25

1 BY ATTORNEY MCKEEN:

2 Q. That's my hypothetical, Dr. Hayter.  
3 You've got it exactly right.

4 A. Right. So in terms of the calculations  
5 that I used in my initial report in those tables and  
6 figures that we were looking at, I would have  
7 calculated total compensation as the sum of those  
8 two amounts, which is the \$101,000, if I remember  
9 your numbers, and I would have calculated average  
10 annual income as half of that amount.

11 Q. And so if we can modify the hypothetical  
12 a little bit, if instead of what I described, the  
13 same physician instead of receiving that \$1,000 on  
14 January 1st, 2020 received that \$1,000 on  
15 December 31st 2019, so that the entire \$101,000 was  
16 received in 2019, then the way your calculations  
17 were performed would mean that his average annual  
18 compensation was calculated as \$101,000 because  
19 that's what he had in 2019 and he didn't have any in  
20 2020.

21 Do I have that correct?

22 A. I think you're right, because now if I  
23 understand you correctly, you're saying that this  
24 physician had no income at all and then suddenly in  
25 one year they got \$101,000, and then after that

1 year, they never had any other income again.

2 The way I calculated total compensation,  
3 that would be \$101,000, and average annual  
4 compensation would be the same, \$101,000. And  
5 that's why I provided analyses both of total  
6 compensation and average annual income which show  
7 consistent and robust results regardless of whether  
8 it's total compensation or average annual  
9 compensation.

10 ATTORNEY MCKEEN: Let's go off the  
11 record, please.

12 ATTORNEY SEELEY: Okay.

13 THE VIDEOGRAPHER: You just said off the  
14 record?

15 ATTORNEY MCKEEN: Yes, please.

16 THE VIDEOGRAPHER: This marks the end of  
17 Media Unit Number 3. Going off record. The  
18 time is 1:56 p.m.

19 (Break in proceedings.)

20 THE VIDEOGRAPHER: This marks the  
21 beginning of Media Unit Number 4, going back  
22 on record, the time is 2:03 p.m.

23 ATTORNEY MCKEEN: Dr. Hayter, I don't  
24 have any further questions for you. Thank  
25 you very much for your time today, and I'll

1 pass the witness.

2 ATTORNEY SEELEY: Thanks. We can stay  
3 on the record. I should only have a small  
4 number of questions for you, Doctor, and then  
5 hopefully we can get you out of here.

6

7 E X A M I N A T I O N

8 BY ATTORNEY SEELEY:

9 Q. I wanted to begin, do you recall earlier  
10 in this deposition Ms. McKeen asked you a question  
11 about the power function and whether you had  
12 described the chi-square analyses done by  
13 Dr. Lasater as having low power.

14 Do you recall that series of questions?

15 A. Yes, sir.

16 Q. Can you explain what you mean by "low  
17 power"?

18 A. It's essentially whether the statistical  
19 analysis has any chance of rejecting the null  
20 hypothesis. Because as I said, the null hypothesis  
21 is a default null hypothesis which gets the benefit  
22 of the doubt.

23 So if you look at data which is  
24 uninformative, you can't learn anything from it, so  
25 you'll necessarily have to accept the null

1 hypothesis which is the default hypothesis. But as  
2 I keep explaining to my students, that doesn't mean  
3 you've proved the null hypothesis. So the power is  
4 important because it relates to whether you actually  
5 have any chance of being able to reject the null  
6 hypothesis.

7 Q. And is a power function the only way to  
8 assess whether a statistical analysis has low power  
9 or high power?

10 A. Not necessarily, because it's also  
11 related to like the preprocessing of the data, which  
12 I explain in my report related to whether the way  
13 you're approaching the problem has any chance of  
14 telling you anything informative.

15 Q. Do you recall being asked various  
16 questions throughout the deposition about what the  
17 nature of plaintiffs' claims were and whether  
18 certain individuals have or have not suffered  
19 legally cognizable harms?

20 A. I do remember that, yes, sir.

21 Q. Are you now or have you ever been a  
22 legal expert?

23 A. Not beyond providing statistical  
24 expertise to legal issues.

25 Q. And do you offer any opinions about what

1 does or does not constitute a legally cognizable  
2 harm under the ERISA statute and regulatory scheme?

3 A. I'm quite certain I don't have the  
4 expertise to opine on that beyond opining on  
5 statistical matters and data which may be relevant  
6 to such an assessment.

7 Q. Do you still have -- I believe towards  
8 the end of the deposition we were talking about --  
9 or you were talking about with counsel [REDACTED] of  
10 your rebuttal report which has been marked as  
11 Exhibit 8. Do you still have that in front of you?

12 A. Yes, sir. I have [REDACTED] of my  
13 rebuttal report.

14 Q. And particularly counsel was referencing

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 Do you recall that?

21 A. I do. Yes, sir.

22 Q. If you had additional information about  
23 individual physician recommendations, would that be  
24 relevant to your analysis, from a broader time  
25 period beyond 2018 to 2024?

1           A.    Yes, absolutely.  Assuming it was  
2   relevant information, because what I'm searching for  
3   is information on individual physician  
4   recommendations, and the more of that you can have,  
5   the better.  So if you had any information on  
6   physician recommendations, whether it was in this  
7   same period, 2018 to 2024, or prior to that or even  
8   after that, all of that additional information on  
9   additional physician recommendations would be  
10  useful.

11           Q.   Is it relevant in your view that some  
12  physicians have total compensation that they  
13  received prior to the period for which the V3 data  
14  has been provided?

15           A.   I think in assessing the plaintiffs'  
16  claims, it's important to consider the total  
17  compensation received by physicians over as large a  
18  time period as one has that data.

19                   So if you're specifically asking whether  
20  physician compensation data prior to 2018 is  
21  relevant to the plaintiffs' claims, then I would say  
22  yes, obviously physician compensation data prior to  
23  2018 is relative to the plaintiffs' claims, because  
24  as I explained, I think I read out the paragraph on  
25  the next page, [REDACTED], where in the middle of that page

1 I say, [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. If you could turn in Exhibit 8 to  
7 [REDACTED] and let me know when you have it.

8 A. So Exhibit 8 would be my rebuttal  
9 report, right?

10 Q. That's right.

11 A. I'm on [REDACTED]

12 Q. Yes, and do you recall some questions  
13 from counsel about the paragraph in the middle of  
14 the page where you discussed [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED].

19 Do you recall questions on that  
20 paragraph?

21 A. I do recall that, yes, sir.

22 Q. And just to be clear, [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



A.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Now, there were also some questions at the beginning of your deposition about Exhibits A and B, and my question to you is did you review Dr. Lasater's report where he purported to identify some potential errors in Exhibits A and B to your initial report?

ATTORNEY MCKEEN: I want to object to the scope of this question. I didn't ask the witness any questions about Exhibits A or B. I asked him about [REDACTED] to his report. So I think this exceeds the scope of my examination of the witness and is improper.

ATTORNEY SEELEY: Okay. We disagree.

ATTORNEY MCKEEN: Caleb, what questions did I ask him about Exhibits A or B? That just didn't happen.

ATTORNEY SEELEY: First of all, I'm not asking him about Exhibits A and B. You asked him numerous questions about certain paragraphs in his report where he made

1 statements about [REDACTED]

2 [REDACTED] It went for about a half  
3 hour, and this will be far shorter. If you  
4 want to preserve your objection, it is so  
5 noted.

6 BY ATTORNEY SEELEY:

7 Q. All right. Dr. Hayter, I'm going to --  
8 I don't even remember my previous question. I'm  
9 going to withdraw it and do my best to ask you  
10 something identical, but it may differ slightly in  
11 wording.

12 Did you review Dr. Lasater's rebuttal  
13 declaration in preparing your rebuttal report?

14 A. Yes, I did.

15 Q. Did you review the portions of his  
16 report where he identified what he said were errors  
17 in Exhibits A and B to your initial report?

18 A. Yes. I reviewed the entirety of  
19 Dr. Lasater's rebuttal report.

20 Q. Did any of the errors that he identified  
21 change any of the opinions that you offered in your  
22 initial report in any way?

23 A. No, they did not.

24 ATTORNEY SEELEY: I have no further  
25 questions. I pass the witness back to

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1 Ms. McKeen if she has anything further.

2 ATTORNEY MCKEEN: I don't have anything  
3 further for you, Dr. Hayter. Thank you for  
4 your time.

5 ATTORNEY SEELEY: Thanks, everyone.

6 ATTORNEY MCKEEN: Thanks, everybody.

7 THE VIDEOGRAPHER: I'll take us off the  
8 record. This concludes today's deposition of  
9 Dr. Anthony Hayter. This is Media Unit 4 of  
10 4, going off record, the time is 2:16 p.m.

11 THE COURT REPORTER: Just tell me what  
12 day you need the transcript, and also does  
13 anyone need a rough draft today?

14 ATTORNEY MCKEEN: No. If we could have  
15 it by Wednesday, would that be possible?

16 THE COURT REPORTER: Sure. I can do  
17 that.

18 (Deposition adjourned at 2:16 p.m.)

19 \* \* \* \* \*

20

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25

DEPOSITION ERRATA SHEET

Job No.

Case Caption: Jason Alford, et al. v. The NFL  
Player Disability & Survivor Benefit Plan, et al.  
Deposition Date: August 25, 2025

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I  
have read the entire transcript of my Deposition  
taken in the captioned matter or the same has been  
read to me, and the same is true and accurate, save  
and except for changes and/or corrections, if any,  
as indicated by me on the DEPOSITION ERRATA SHEET,  
hereof, with the understanding that I offer these  
changes as if still under oath.

Signed on the \_\_ day of \_\_\_\_\_, 20\_\_.

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DR. ANTHONY HAYTER

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DEPOSITION ERRATA SHEET

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DR. ANTHONY HAYTER

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Rhonda D. Tuck, RPR, CRR, Notary Public in  
3 and for the Commonwealth of Virginia at Large, and  
4 whose commission expires on May 31, 2028, do certify  
5 that the aforementioned appeared before me, via  
6 remote videoconferencing, was sworn by me, and was  
7 thereupon examined by counsel; and that the  
8 foregoing is a true, correct, and full transcript of  
9 the testimony adduced.

10 I further certify that I am neither related to  
11 nor associated with any counsel or party to this  
12 proceeding, nor otherwise interested in the event  
13 thereof.

14 Given under my hand and notarial seal in  
15 Fluvanna County, Virginia, this 27th day of August,  
16 2025.

17  
18  
19   
20

21 Rhonda D. Tuck, RPR, CRR

22 Notary Public Registration No. 224847

23 Commonwealth of Virginia at Large  
24

25 Job No. 7554391



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1 Caleb Seeley, Esq.

2 cseeley@seegerweiss.com

3 August 27, 2025

4 RE: Alford, Jason, et al. v. The NFL Player Disability &  
Survivor Benefit Plan, Et Al.

5 8/25/2025, Dr. Anthony Hayter (#7554391)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 cs-midatlantic@veritext.com.

16 Return completed errata within 30 days from  
17 receipt of testimony.

18 If the witness fails to do so within the time  
19 allotted, the transcript may be used as if signed.

20  
21  
22 Yours,

23 Veritext Legal Solutions  
24  
25

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[believe - change]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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